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OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1986

ORIGINAL

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

COMPLETED
86

ON

S. 2340

A BILL ENTITLED THE OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1986

APRIL 29, 1986

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OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1986

TUESDAY, APRIL 29, 1986

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 2:12 p.m., in room SD-406, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Chafee, Symms, Humphrey, Durenberger, Bentsen, Mitchell, Baucus, and Lautenberg.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. The purpose of the hearing this afternoon is to hear the views of the administration on enactment of comprehensive oilspill legislation.

We are very pleased to welcome the Secretary of Transportation, Elizabeth Dole, who will present the administration's position. It is most appropriate for Secretary Dole to be before us as she played a leading role in the development of administration oilspill policy, both in the domestic and foreign arenas.

Today's hearing is the first of what I believe will be a short series of hearings on oilspill legislation. This committee has a long history of consideration of the topic and in this and future hearings will be seeking primarily to bring ourselves up to date on recent developments.

The issues that we have struggled with in the past are before us again today. They include who should pay for damages from oilspills and how to structure a system that will minimize spills and maximize response effectiveness.

This committee has debated these issues in depth on several occasions and in several contexts over the past 8 years. On each occasion, we have concluded that an acceptable system must provide full payment to victims for all damages. In a related view, we concluded that the States should be allowed to supplement whatever Federal scheme is put in place.

I and eight other members of this committee have introduced S. 2340, a bill which incorporates the features of a bill reported by this committee and passed by the Senate in 1978. That bill preserves the rights of States and places no artificial cap on the amounts that can be recovered in the event of an oilspill.

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Another legislative proposal is before the committee in the context of the Superfund conference. Title IV of the House Superfund bill proposes legislation that would preempt State oilspill funds and liability laws and would set a limit of $200 million per accident for damages regardless of what actual damages might be.

There are also pending before the Foreign Relations Committee two international conventions which, together, would accomplish limitations similar to those in the House bill. Approval of these conventions in their present form would preclude choices that this committee in the past has found to be, in its judgment, best policy.

I, with the concurrence of my colleagues on the Environment and Public Works Committee, have committed to working expeditiously to produce a comprehensive oilspill bill that the members of this committee can support. It is my intention to do this in time for the Senate to consider the legislation during this session of Congress, provided the Finance Committee can complete action on the revenue portions of such a bill.

The task before us is not an easy one, but I believe today's hearing will help us focus on the important issues and provide a good beginning for fruitful deliberations.

Senator Lautenberg, do you have an opening statement?

Senator LAUTENBERG. I do, Mr. Chairman.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Secretary Dole, I welcome you here. We have worked together on lots of things, most noticeably on a very successful piece of legislation raising the drinking age across the country to 21. We saved some lives there.

Today, we would like to save the environment as much as we can, and we are going to address a very important part of getting to that job. I want to commend you for your initiative on this issue.

Like so many pollution problems, oilspills do not respect State boundaries. Last year, a spill of over 430,000 gallons of oil in the Delaware River damaged the shores of New Jersey, Delaware, and Pennsylvania.

A Federal mechanism for oilspill cleanup and compensation would aid the States that are vulnerable to oilspills and enable us to work with the international community more effectively. So, I share your interest in enacting a Federal oilspill bill.

We should strive to work out our disagreements with the goal in mind of enacting a Federal program. As you very well know, the framework for accomplishing this goal was offered 2 weeks ago, as the chairman mentioned, by nine members of this committee who joined in introducing S. 2340, and I commend the chairman for viewing this at this hearing today.

The committee will consider a range of complex and controversial issues, compensation and restoration of natural resources, and vessel liability. Today, I would like to focus on the issue of Federal preemption of State oilspill programs.

Unfortunately, this appears to be an area of disagreement between the administration and a significant number of members of this committee. It is my position that any language giving the Fed-

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eral Government the right to preempt State oilspill programs, no matter how carefully crafted, whether international or not, will undermine constructive State efforts to deal with oilspills. It must be avoided.

Preemption will deny the States the ability to develop their own oilspill programs, and it will result in lengthy and expensive litigation. Therefore, Madam Secretary, I do take exception to the administration's position urging Federal preemption for State spill programs. As the committee considers the legislation, I am going to urge that we stick by S. 2340 which affirmatively states that there will be no Federal preemption for State laws or funds.

In New Jersey, we have suffered the consequences of ambiguous preemption provisions in the Superfund statute which have resulted in almost 6 years of litigation. The spill fund contested in this litigation is the same fund in New Jersey which covers oilspills. So, we mustn't start this fight all over again on oilspills.

I hope the administration can reconsider its position on this particular issue, and I look forward, as usual, to working with you and other members of the committee to secure prompt action on a Federal oilspill bill.

Thank you for being here, Madam Secretary. Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Mr. Lautenberg.

Senator Symms, did you have an opening statement?

Senator SYMMS. Not at this time, Mr. Chairman, thank you.

Senator STAFFORD. Thank you very much, Senator.

We will leave the record open at this point for the statements of other members of the committee who may appear during the course of the hearing and wish to submit a statement for the record.

[The following statements were submitted for the record:]

OPENING STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM THE STATE OF TEXAS

I welcome today's hearing, for it reopens this committee's inquiry into what kind of oil spill response legislation might be appropriate to replace the variety of existing Federal laws. The Environment and Public Works Committee was a leader in the passage of those laws, such as the Outer Continental Shelf Lands Act and section 311 of the Clean Water Act. We were also leaders in the effort during the late 1970's to develop umbrella legislation to consolidate those laws. Although that work helped in the passage of the chemical superfund, that oil-related effort was suspended when the administration opposed such legislation. Now, and largely due to the work of Secretary Dole, the administration is again interested in legislation establishing an oil spill superfund.

This may well be the time to make such legislation come about. There is a need for a better mechanism to compensate those damaged by oil spills. Two of the largest spills of recent memory affected Texas shores. Much oil from the well blowout in Mexico's Bay of Campeche fouled Texas beaches and interfered with fishing. Just two years ago the breakup of the British tanker *Alvenus* caused more than $100 million in claims by the loss of only a fraction of its oil cargo.

I will want to assure that any legislation we consider is adequate to deal with cases of this sort. The State of Texas has asked that its recently amended response program and liability laws be protected, and I will review proposals with that need in mind.

I will support improvements in our Nation's laws dealing with oil spills. I am convinced, however, that the proper way to make such improvements is through hearings such as this, followed by committee markups and Senate floor action. This subject is too important to deal with as a minor agenda item in a Superfund conference with pressing deadlines.

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I look forward to Secretary Dole's testimony.

Opening Statement of Hon. George J. Mitchell, U.S. Senator From the State of Maine

Mr. Chairman, I want to express my appreciation to you for holding a hearing on the subject of oil spill liability. This issue is one of great importance to me and to the State of Maine. Its significance is increased this year due to two events. First, as you know, the House passed oil spill legislation that was attached to the Superfund bill on which we are now in conference. Second, pending before the Foreign Relations Committee are the 1984 protocols which, if approved by the Senate, would make the United States part of the international regime of oil spill coverage. Thus we find that the oil spill issue is addressed at the State, Federal, and international levels.

Many parties are interested in this legislation, but this interest has not yet been translated into agreement. Nowhere is this more true than in the area of preemption.

Maine was concerned enough about oil spill liability to enact one of this country's first oil spill laws in 1970. The State has had great success with this statute (it has been used to clean up over 100 spills), and is opposed to seeing it preempted by either the domestic or international systems.

We spend a lot of time here in Washington repairing laws and practices that don't work. Now some members of Congress and the Administration want to repair State laws, such as Maine's, that do work.

The repair, unfortunately, would take place by simply preempting existing State laws. This is no fix, this is a prescription for further confusion and litigation in an area of environmental protection that has been more straightforward than most.

Since the oil spill statute in Maine, and in other States such as Florida, have been on the books for some time and has worked well, I am opposed to Federal or international tinkering that will unravel this success story. I am not opposed to Federal legislation on oil spill, nor am I unalterably opposed to an international regime, so long as States in this Federal society of ours retain the right to have their own statute that dictates what the liability system will be within that State's borders.

While preemption is my paramount concern, I would not want to leave the impression that it is my only concern on this issue. The House bill that is attached to Superfund in many ways erodes protection afforded under existing law. For example, the House bill provides for a $60 million limit on liability for ships for cleanup and damages. Existing section 311 of the Federal Water Pollution Control Act has a limit of $150 per gross ton for cleanup alone with no upper limit, and the Outer Continental Shelf Lands Act has no limit for cleanup. The House bill does not provide for compensation for natural resources damages, while two existing Federal statutes (the Outer Continental Shelf Lands Act and the Deepwater Ports Act) do provide for such compensation.

As we move forward on oil spill legislation this year, I will support provisions that in fact move environmental protection forward and will oppose those that signal a retreat from existing law.

The protocols are advertized as improvements over existing law. In some areas, this may be true. Taken as a whole, however, there are provisions that raise serious questions in my mind about the wisdom of supporting these protocols as currently written.

For example, liability is "channeled" to shipowners, the only party held liable under this regime. Most domestic statutes establish strict, joint and several liability on owners and operators. Recourse against any potentially responsible party must be retained, as it has been in the case of Superfund and in many State oil spill statutes. In my view, the purpose of any useful liability scheme must be to increase the efficiency and equity of handling claims, not to shut out potential claimants. This view is echoed in S. 2340, which Chairman Stafford, I, and other members of the Environment Committee introduced earlier this month.

In addition, the limits on liability may not be sufficient. I am told that the $200 million proposed limit was selected because the Amoco *Cadiz* spill, the largest to date, should cost approximately that amount. However, claims for damages from that spill are far in excess of the $200 million limit proposed in the House bill and the protocols. The claims have not yet been settled, so none of us are sure what that spill will cost.

Two years ago, the British tanker *Alvenus* grounded off the Texas and Louisiana coasts. While only 2 million of the 14 million gallons of oil the tanker carried were

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spilled under favorable weather conditions, claims have been filed in well over $100 million.

In fairness, I do believe that the proper Federal and international systems for responding to oil spills can enhance our ability to effectively and fairly respond to oil spills. Proper compensation and protection of our environment, and the States' rights to provide their own protection, must remain our paramount goals as we address this complex issue.

Thank you Mr. Chairman.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Mr. Chairman, I am pleased that today's hearing will begin a series of hearings which will lead to legislation which will provide comprehensive protection from catastrophic oil spills similar to what Superfund does for chemical wastes.

It is my hope that whatever legislation we develop will be nationwide. We should not create a two-tired system. Any catastrophic oil spill program should extend to all of the inland waters of the United States.

Legislation is in place to address natural resource damages. Section 311 of the Clean Water Act provides a framework which should be strengthened and expanded to address fully oil spills.

Section 311 prohibits the discharge of harmful quantities of oil or other hazardous substances into the environment and for the protection of natural resources.

The preservation of the public trust in the nation's resources should continue to be the policy of the United States.

Remedial actions need to be directed first at stopping the spread of a spill. But simply stopping the spread of a "release" or spill is not enough.

Long-term protection of public health and the environment should be the real goal of this legislation. This result will only be achieved if natural resources are fully protected.

Section 311 is the major means available in Montana to address spills of oil into Montana waters. With the vast network of petroleum development facilities throughout the state, the liability protections under Section 311 Clean Water Act are critically important.

Strict liability should continue to be the standard. And protection should be clarified to include "groundwater pathways" to bodies of water.

I am deeply concerned about those who have proposed to limit our chemical cleanup law to simply include removal actions rather than restoration of natural resources.

This approach is extremely shortsighted. If it were extended to an oil spill, it would be like corraling the area of a spill while ignoring the long-term damage caused to the environment. Even though we contain a spill, we cannot ignore the damaged aquatic life, ruined shoreline and oilsoaked waterfowls.

"Remedial action" is important, but it isn't everything. It is wrong to limit natural resource protection in Superfund, and it would be shortsighted to do it in the development of oil spill legislation.

I look forward to this series of hearings and developing legislation. Sound oil spill legislation is needed. It must not be a retreat from either the Clean Water Act or Superfund.

Senator STAFFORD. Mrs. Dole, I guess we are at a point where we would be very pleased to hear your statement.

Secretary DOLE. Thank you, Mr. Chairman.

Senator STAFFORD. Mrs. Dole, if you could hold just 1 minute, my personal good friend as well as the ranking member of this committee, Senator Bentsen, has arrived.

Senator, if you have an opening statement, I would ask that it be placed immediately following my own.

Senator BENTSEN. Thank you very much. I will save the Secretary's time and put mine in the record.

Senator STAFFORD. Without objection, we will put it in right after mine.

Senator BENTSEN. Thank you very much.

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Senator STAFFORD. All right, Mrs. Dole.

STATEMENT OF HON. ELIZABETH H. DOLE, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ADM. J. WILLIAM KIME, CHIEF, OFFICE OF MERCHANT MARINE SAFETY, U.S COAST GAURD

Secretary DOLE. Thank you very much.

Mr. Chairman, I would like to say at the outset that you are doing a great service for our citizens and our environment in hearing this important issue today, for the problem of oilspills is a major environmental concern of our time. As you can see from our illustrations here and from the photographs that we have provided to members of the committee, birds die, beaches are damaged, marine life is upset.

Even though the U.S. works very hard to prevent oilspills and has one of the best response networks in the world, we are not immune from oilspills and their damaging effects. Accidents will happen, and several major spills in U.S. waters in the past 2 years off the coasts of Texas, California, and in the Delaware River demonstrate our continued vulnerability.

It is essential that our citizens and our environment have the best protection and recourse possible and that our environment be protected.

Last December, for example, the U.S. tanker *Arco Anchorage* ran aground near Puget Sound, WA. Nearly 190,000 gallons of Alaskan north slope crude oil discharged into the waters, causing millions of dollars in damage to the lumber industry.

Again, last September, the Panamanian tanker *Grand Eagle* ran aground in the Delaware River, releasing an estimated 425,000 gallons of crude oil into the river. Although the shipowners took rapid clean-up action, the effects to the Delaware, New Jersey, and Pennsylvania shorelines were not easily erased.

A particularly alarming spill occurred in June 1984 when the British tanker *Alvenus* carrying 14 million gallons of crude oil grounded and fractured just off the Texas-Louisiana coast.

When the U.S. tanker *Puerto Rican* suffered explosions 10 miles out of San Francisco in 1984, the Coast Guard directed that the vessel be towed seaward, lessening the threat to the coastline. Even with these heroic efforts, some oil did reach the sensitive Farallon Island marine sanctuary and California coastline.

The only mandatory insurance coverage for the *Puerto Rican* was for $3 million for clean-up and natural resource damage required by section 311 of the Federal Water Pollution Control Act. Had we been a party to the 1984 protocols to the 1969 Civil Liability and 1971 Fund conventions and had the protocols been enforced, the total compensation available for each of these spills would have about $235 million.

I am delighted to be here today to convey the administration's continued support for oilspill liability and compensation legislation, including, in particular, the 1984 protocols. With me today is Rear Adm. J. William Kime, chief of the Coast Guard's Office of Merchant Marine Safety.

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As you know, Mr. Chairman, there is wide agreement among the Congress, the administration, the oil and shipping interests, and the environmental community that in addition to a first class oilspill response capability, this country needs and equitable, adequate, and comprehensive system to compensate those damaged by spills. Efforts to obtain oilspill liability and compensation legislation have been underway since 1975, and my goal, Mr. Chairman, is to work with you and the committee to ensure passage of this legislation this year.

There are a number of desireable provisions and features that I believe comprehensive oilspill legislation should contain. The four existing funds should be replaced with a single trust fund. The Coast Guard presently administers three of those funds. They have extensive oilspill response experience, are highly respected in the community of experts and liability regimes, both nationally and internationally, and are well qualified to manage a new single fund.

Currently, the Coast Guard is not fully reimbursed for its removal and clean-up costs. We support a system that would shift responsibility of these expenses from the taxpayer to the polluter.

With respect to financing the trust fund, we continue to support the use fee concept rather than financing from general revenues. A fee of no more than 1.3 cents per barrel would be collected on all crude oil received at U.S. refineries, crude oil exported from the United States, petroleum products, and imported crude oil. This very modest fee would provide funds, about $74 million per year based on our 1985 oil consumption level, to cover long-term fund obligations.

In addition, by transferring the moneys in the pollution funds currently managed by the Coast Guard as well as the Trans-Alaska Pipeline Fund into the new trust fund, start-up funds would be assured. We would support terminating collections when the fund's assets reached $300 million.

With respect to liability, we believe that the new regime should cover vessels and Outer Continental Shelf and deepwater port facilities. Facilities onshore and facilities in State waters should be left to State laws.

We believe the new oilspill legislation should merge duplicative State systems into the Federal system. However, States with existing oilspill funds should have a reasonable time to adjust to the new system.

On the other hand, States should be able to collect funds for any other functions, such as funds which finance the purchase or prepositioning or clean-up and removal equipment and other preparations for removal of oilspills.

Where States initiate emergency clean-up efforts, moneys from the Federal trust fund can and should be made immediately available to cover the costs of such removal efforts. In other words, it would be like having a charge card. It would not even be a matter of replacing funds but just simply taking the action, so that we have incentives for immediate and fast response and charge it to the fund. That is indeed the way the Coast Guard would intend to spell out the regulations.

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In addition, States would not be prevented from using general revenues or other revenue sources not based on a fee on oil to maintain their clean-up, response, and damage funds.

A major concern of ours is that the trust fund must be liable only for oilspill removal costs and for clearly identifiable damages. The fund should not be open to theoretical or speculative claims. The fund should be liable for costs to replace or restore personal or real property and the costs to a State or the Federal Government for the actual replacement or restoration of natural resources once claimants have exhausted all reasonable remedies against responsible parties.

Its liability should not include lost profits or taxes or the value of natural resources which are destroyed but cannot be replaced.

We also support a $200 million cap per oilspill incident. That amount would cover the cost of any spill that has occurred thus far world wide.

As to the limits of liability, those presently recommended by the House of Representatives, that is, title IV of H.R. 2005, except in one area of concern, have our full support. We have not yet rationalized why the limit of liability from an inland oil barge—that is only $150,000 in the House bill—should be less than that for tankers. For tankers, it is $3 million or $420 per ton.

We also strongly believe that adequate limits of liability and financial responsibility requirements, backed by a viable fund, are preferable to unlimited liability with uncertainty of resolution.

I might just add to the point about the barges. They certainly move back and forth in congested waters frequently and come into proximity with sensitive environmental areas. We really don't see why there should be a discrepancy there when the barges actually, according to data that we have, have been the point of concern on literally twice as many spills and literally twice as much volume of oil has been spilled by the barges.

This brings me to a point which is of critical importance. We strongly support the 1984 protocols to the 1969 Civil Liability and 1971 Fund conventions relating to seagoing tanker oil pollution damage liability. These protocols were adopted at the 1984 IMO, International Maritime Organization, diplomatic conference convened to update the conventions.

This is, Mr. Chairman, an international problem that requires an international solution. The regime established by the protocols creates a clear internationally recognized standard of liability for tanker owners. Jurisdiction is clearly established in the courts of the country where damage occurs, and the shipowner's liability is backed by an internationally enforced compulsory insurance system. A judgment rendered in courts of a nation having jurisdiction under the Civil Liability Convention will be honored in the court of another country which is party to the convention, and that is a major benefit to the United States.

I believe the protocols offer excellent insurance to the United States with respect to oil pollution from foreign flag tankers. As I pointed out earlier, our response and our prevention efforts are among the best in the world. However, as our recent spill history indicates, we can expect occasional spills of oil from both United States and foreign flag vessels. When fully implemented, the proto-

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cols would provide the level of protection needed in the event of a spill like the *Amoco Cadiz* which is, of course, the largest tanker spill in history where the damage may reach $190 million.

The United States must take the leadership in adopting the IMO protocols. You will recall that members of this committee provided a list of your concerns to be addressed at the IMO conference. I visited with the IMO Secretary General Srivastava during the diplomatic conference to place emphasis on the improvements that you desired and which you conveyed to me in your letter.

We were instrumental in meeting almost all of your goals. We obtained every objective except the coverage of nonpersistent oil. The reason that the international conference was not willing to go with that particular area is because of the concern over the impracticalities of collections.

At that conference, I was impressed with the world maritime community's interest in seeing the United States as a full partner in the CLC and the Fund regime. We are the only major maritime country that is not a party at this point. They look to the United States for leadership, and any comprehensive U.S. oilspill regime must, in my view, include implementation of the international regimes established by the protocols. This will be a network that is world wide.

Their ratification should proceed without delay. I am pleased that, as you know, President Reagan has transmitted the 1984 protocols to CLC and to the Fund to the Senate for its advice and consent. That was done last November, and I will be testifying before the Senate Foreign Relations Committee on May 15 regarding the ratification of the protocols.

We recognize the need for the interim voluntary system for oilspill liability and compensation that is currently being provided by tanker owners and oil interests, TOVALOP and CRISTAL. Pending the coming into force of the protocols, we would hope for a similar system which offers equitable distribution of costs and contains as nearly as possible provisions compatible with and benefits to U.S. citizens the same as those offered by the protocols.

However, we don't see a voluntary system as a solution to the long-term problem because they are subject, of course, to termination at any time. In fact, recent developments have placed the future of TOVALOP and CRISTAL in question. The intended replacement regime, PLATO and CRISTAL-85 has failed to attract the necessary participation to bring it into place.

Last December, the House of Representatives passed comprehensive oilspill liability and compensation legislation that includes the key features I have noted today. We support the approach taken in this legislation, although we do oppose compensation of speculative damages such as lost wages or taxes.

Now I would like to turn to the oil pollution liability and compensation legislation that has been developed by this committee, S. 2340. While it does consolidate the existing patchwork of Federal oilspill legislation and establish a Federal fund to compensate the victims of oil pollution, it does not contain a number of elements that I feel are truly essential: First, as I have mentioned, implementation of the 1984 protocols to the CLC and the Fund; creation of a financing mechanism; compensation for the victims of pollu-

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tion damage only for removal and cleanup, property damage, natural resource restoration or replacement, and administrative costs; and merging duplicative State regimes into the Federal system after an appropriate transition period.

Therefore, major changes to this legislation would be necessary before we could support it. We certainly want to work with you in any way we can to resolve these points and to move forward together to enact what I think we can all view as a key environmental initiative.

In conclusion, I would like to stress the need for maintaining the broad support among affected interests. Only with the combined support of the oil and shipping industries, the States, and the environmental interests can we hope to achieve a viable and comprehensive oil pollution liability and compensation regime which truly serves the overall public interest.

It is time to afford the American public the benefits of a comprehensive oilspill liability and compensation system that includes the 1984 protocols to the CLC and Fund. The United States has the opportunity to take the leadership in ratifying these protocols. The cause is just, the time is now, and I look forward to working with each of you to promptly resolve any remaining details.

This concludes my summary, Mr. Chairman. I have submitted a longer statement for the record because, obviously, there are a lot of aspects of this I haven't gone into detail on, but I do appreciate this opportunity to provide a summary, and I will be happy to answer questions that you might have.

Again, I appreciate very much the chance to be here today.

Senator STAFFORD. Thank you, Madam Secretary.

First, I would now want the record to show that eight members of the committee, a voting quorum, have been actually present in the hearing room in connection with the confirmation of Mr. Dunkle. Second, after consulting with Senator Bentsen, if it is agreeable to other members, and I think it should be, we would limit ourselves to 10 minutes on the first round of questions.

Finally, I know that Senator Mitchell has an opening statement, so before we get to questions, Mrs. Dole, we would yield to Senator Mitchell and we would, without objection, place his statement with the other opening statements in the record.

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Mr. Chairman, in the interests of time and so as not to unnecessarily detain the Secretary who was kind enough to come here, I will ask that my full statement which is fairly lengthy be placed in the record.

Senator STAFFORD. Without objection, it will be.

Senator MITCHELL. I would merely like to say that I welcome the Secretary here. As she knows, this is a matter of critical importance to my State. Maine was concerned enough about oilspill liability to enact one of the country's first State oilspill laws.

It has worked very well. We have cleaned up over 100 spills. It doesn't need repairing. It doesn't need changing, and it most certainly doesn't need preempting by a Federal law.

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As I told the Secretary, I think there is a rather spectacular irony that this administration which continually preaches the importance of States handling their own problems and the President keeps telling us that the Federal Government is the source of most of our problems and that we, as a people, ought to be reluctant to extend the reach of Federal authority into areas best left to the States to which we all nod in agreement now comes in here and proposes a massive Federal intrusion into an area previously left to the States and in which the States—those concerned with it, at least—have done very well.

So, I would appreciate hearing from the Secretary—she knows I was going to ask her this question because I asked her this question many times including just a couple of hours ago in a private meeting—if she could tell me whether she agrees with President Reagan when he repeatedly says the Federal Government is the source of our problems and we don't need the Federal Government to go out and tell us what to do, and we don't need the Federal Government getting into areas of jurisdiction previously left to the States, whether she agrees in this instance with President Reagan and me who stand together on this philosophic principle. And if she disagrees with President Reagan and me, perhaps she can tell us and then later tell President Reagan, I hope, why she so strongly disagrees.

I have done this, Mr. Chairman, to make my point. I am not opposed to Federal oilspill legislation. I think there is a very positive and reasonable rationale for it. But I am very strongly opposed to preempting and prohibiting the States from doing what they have been doing very, very well.

There is an old saying that I used to think was a Maine saying, but since I came to the Senate, I have found it is a Vermont saying or a Texas saying or a New Jersey saying or Wyoming and other places: if it ain't broke, don't fix it. Maine's oilspill liability program ain't broke. It don't need fixing, and, most certainly, it don't need fixing by the Federal Government.

Mr. Chairman, my statement is much longer than that; I will put the rest of it in the record.

Senator STAFFORD. Thank you very much, Senator Mitchell. While Mrs. Dole ponders her rejoinder, we will start with some other questions.

Madam Secretary, I want to be sure that I understand the administration's position with respect to the maximum amount of damages that could be recovered from any one accident. As I understand it, you believe the amount should be the maximum liability of the responsible party plus up to $260 million from the oilspill trust fund, or something like a total of $260 million at the very maximum. Am I correct in that?

Secretary DOLE. Mr. Chairman, on the domestic side, the top dollar there would be $200 million. It would be approximately the same for the international regime as well, although because of the exchange rates, there is some difference there. Overall, it is about $200 million. Then, with the level of liability on the vessel owner, of course that is the first point of recourse, it would be about $60 million for domestic and $69 million internationally, again because of the exchange rate issue.

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Senator STAFFORD. Then, if that is correct, may I ask what thought had been given to the question of who should bear the costs of a spill if the damages should exceed that maximum?

Secretary DOLE. First of all, let me say that at this point in time, this amount covers any spill that has occurred in U.S. history. The damages for the *Amoco Cadiz* are projected at about the $190 million dollar level. I might add, it has been many years, and action on claims from that spill is still not completed, which is one of the real benefits of having a comprehensive system in place. There won't be these long, drawn-out court cases in the future under this regime that we are advocating.

So, we do anticipate that this would cover any major spill. In fact, the eight spills in the United States have been basically around the $20 million level thus far. Of course, this one is the extraordinary, the catastrophic case that we are trying to protect against.

Now, if in the future it were determined that the level of liability on the vessel owner should be looked at again for reasons of inflation or whatever, once this system is in place—and let's assume that since it was presented for signing in 1984, 6 years hence it could become effective in 1990—then there is a mechanism for looking again at the levels of liability without holding a diplomatic conference. It is called a tacit amendment procedure. That could produce a change by 1993 if it were felt that adjustments needed to be made.

As far as the domestic fund is concerned, I might just add that if there were a couple of spills that put it over the amount of money in the fund, the House bill contains a provision which we would certainly agree to. We think it would be a good idea that up to $300 million could be advanced to the fund, of course, repayable with the receipts of 1.3 cents a barrel on oil.

Senator STAFFORD. Let me just ask this hypothetical, then. If the damages from a very large oilspill exceeded the available funding from both the vessel owners and trust fund, then would not those who had been injured be bearing part of the cost of the disaster?

Secretary DOLE. Again, we don't anticipate that. We think that this is the proper level. In the letter that was sent to DOT before the IMO conference, the committee recognized that there would need to be a particular level put into place, and I think you recommended $250 million for the top dollar.

This was what was achievable in the international arena. $200 million was the highest that could be achieved and obtain the agreement of the parties there. It would more than cover the largest spill that has occurred worldwide in our history. So, we do anticipate this would be satisfactory.

Senator STAFFORD. I was simply looking at a hypothetical in which there wasn't enough money to cover it. It would appear to me, should that happen, that those injured would have to bear some of the cost beyond the available funds for recompense of the disaster.

Secretary DOLE. I think what we are looking at is tradeoffs here. If you look at just unlimited liability, you are looking at a situation where many years down the road, there may or may not, after a court case, be a return of the money on the damages. In place of

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that iffy situation, we have a very definite regime. There would be quick action. In other words, there would not be a long, drawn out court case. They are very high limits. The fund would provide more on top of the liability of the vessel owner, up to $200 million. You would have a compulsory insurance system in place.

I think that provides a great deal of certainty, surety, efficiency, speed which we simply don't have now. So, if there is any tradeoff, I would say very definitely it is in the interests of the potential victim.

Senator STAFFORD. Thank you very much.

When this committee conducted an extensive inquiry in the late seventies on the questions of whether a new Federal oilspill law was necessary, we wrote to each of the Governors. We found that most Governors opposed preemption in part because they believed the Coast Guard would be unable or unwilling to respond to the many smaller spills which confront State and local officials. Connecticut, for example, reported response by State or local authorities to about 3,000 spills per year.

If that State's experience is representative, the Coast Guard would be required to respond to about 60,000 oilspills per year if it assumed all responsibilities for these instances. Could you estimate the total number of personnel required to maintain such a Federal program?

Secretary DOLE. Mr. Chairman, we would look to the States to continue doing exactly what they are doing. One of the many purposes here is quick response to a spill. We want the incentives to be properly positioned here so that whatever party is on the scene can quickly move to clean it up. That is what we want to happen.

Therefore, we would look to the States as agents, if you will, to clean it up. Whoever is on the spot. Rather than being reimbursed for their expenditures, they could actually charge it against the Federal fund.

This is the way the regulations, the guidelines, would be spelled out by the Coast Guard in administering this new fund. That is the intention no matter whether there is a small spill or a large spill. In other words, everything in the way of oilspills would be either paid back or charged originally, up front, against the fund so that there is an incentive to act quickly and to get it done, large or small, wherever it is located, whatever facilities, whatever vessel. It is all covered.

Senator STAFFORD. Thank you.

I want the Admiral to know that I am well aware of the good work that the Coast Guard does and how thinly they are stretched trying to keep all of us with boats from making fools out of ourselves and getting us out of trouble. We appreciate it.

Secretary DOLE. Mr. Chairman, I would just add that as far as the State funds are concerned, we expect that the State funds would continue to be active in this area. So, it is not a matter of jobs being lost or changes occurring there. Basically, they would stay as they are, as we see it.

Senator STAFFORD. Madam Secretary, one of the major reasons advanced for having a national uniform law with liability limits is to make it easier for shipowners and operators to obtain insurance. Under current Federal law, States are free to establish liability

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limits or not as they see fit. Many, including Maine and Florida, have no such limits because there is no arbitrarily selected limit on liability. Polluters are responsible for the full extent of their damages.

Do you have any evidence that the shipowners and operators in Maine or Florida either are unable to obtain insurance at all or that they are paying substantially higher premiums? And, if you do not have information on this subject, could your department's personnel conduct a reasonable survey of vessel owners and operators as well as facility owners and operators to determine what differences in insurance availability coverage and cost exist? The committee would appreciate it, should such information become available or be available, if we could have it by mid-May.

Secretary DOLE. Mr. Chairman, Admiral Kime has some information he can share with you right now.

Senator STAFFORD. All right.

Admiral KIME. Mr. Chairman, we are continuing our survey along these lines, and we will provide the information as requested. I would like to share with you the information we have accumulated to date. That is that there is no insurance market for shipowners to comply with State liability limits, especially those which are unlimited. Therefore, the reputable operators are operating at a very extreme risk. Let me expand on that a little bit.

It is next to impossible, based on our survey so far, to get financial responsibility insurance based on a State law. Second, all tanker owners are currently operating under the P&I insurance scheme, no matter which States they operate in or where in the world they operate. That provides for unlimited liability for everything except oilspill damage and there is a maximum limit of $300 million.

That is a bit deceptive because, No. 1, since that limit was instituted, it has never been approached in a spill. The concerns that exist among the reputable tanker owners is because this $300 million is made up as follows: A small amount by each P&I club, maybe $0.5 million and maybe a group of P&I clubs share up to $10 million, and the rest of the $300 million is reinsured on the international insurance markets such as Lloyds.

If we had a spill where the damages approached this amount, there is very valid concern among the insurance interests and the tanker owners—and I am sure in your subsequent hearings they will expand on this—that that would either make this reinsurance market either totally unavailable or the premium for reinsurance would be so high that it would not be made available to the P&I club and subsequently to the tanker owner. We feel that this will have the ultimate impact of driving the more reputable tanker owner who has a great deal more to lose than just the value of his vessel out of the marketplace.

Thank you, sir.

Senator STAFFORD. Thank you very much, Admiral.

I have consumed my 10 minutes, and I will next recognize a former yachtsman who, as far as I know, never did make a mistake on a boat, Senator Bentsen. Then I will yield to one who has make a mistake, but I haven't found out what it was.

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Senator BENTSEN. When it comes to bringing in a sailboat, I have made my full share of mistakes. I would not try to claim immunity there.

Let me say, Madam Secretary and Mr. Chairman, I am just delighted we are having these hearings. It certainly is time that we try to bring together the variety of Federal laws that we have on oilspill clean-ups.

I might say also to my friend from Maine that I know the Secretary has disagreed with the administration before, and she has been very persuasive when she did. In 1981, when we were discussing legislation and the consolidation of these laws and coming forth with Superfund, part of it was to do something about oilspills. The administration opposed it, and we brought that part of it to a halt. But I think because of the persuasiveness of the Secretary and her abilities to set forth the facts from her point of view, she has been able to get the administration to reverse its position. So, I would try to get her on my side, if I were you, and I congratulate her for what she has done in that regard.

Secretary DOLE. Thank you.

Senator BENTSEN. One of the things of concern to me, Admiral, I note here the $200 million limit and the limit on the tanker itself. I can understand that one on the tanker very well because I think you are going to have problems getting insurance unless you put some kind of a limit there. But when you get into the Fund and the $200 million cap, I look at some of the things that have happened to us along the Texas coast, and I have some deep concern about something like the *Alvinas* incident where you saw a situation where it spilled only a fifth of its load and we are already talking about claims of over $100 million.

If you look at the *Amoco Cadiz* incident where you still have hundreds of millions of dollars' worth of claims that haven't been settled, although the cleanup costs may not have exceeded the limits.

That is a replenishable fund. Why do we have to have the limitation on the fund itself?

Admiral KIME. Senator, I think we go back to the letter that the committee sent to the U.S. delegation prior to the diplomatic conference, the one that Secretary Dole referenced, it also recognized the need to establish some type of limit on a fund. That limit should be reasonable high, though, so that it would cover any reasonably expected level of valid claims against the fund.

We feel that is what was achieved internationally, as Mrs. Dole indicated. The international fund that would have covered the *Alvinas* had we been party to it and had it been in force would have had limits up to $239 million based on the SDR rate that exists now.

I believe there is concern that it is possibly not good public policy to establish a Federal fund with unlimited liability even with the dedicated source of funding that we are talking about. In this time of fiscal restraint that we are all under, I don't believe that there would be wide public and industry support of it.

Senator BENTSEN. Even though the claim is there?

Admiral KIME. Senator, I think the concern is that we don't have a history to indicate that the level that has been proposed is not

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high enough. I think this is something that does need to be continually reviewed and the international regimes, of course, at the request of this committee and very wisely so, do provide for an upgrading mechanism to increase these limits under some circumstances.

Senator BENTSEN. Well, I am told that the *Amoco Cadiz* situation could end up over $250 million. Of course, our underlying concern is to be sure that every legitimate claim is finally paid. That is what I am citing here and why I have some concern about that particular limit.

Let me get on to some other points here because of the limitation of time. One of the most serious oilspill incidents that we have had in our recorded history was what happened from the Bay of Campeche and the gulf current bringing it up along the Texas coast. Neither the House-passed bill nor the international protocols take care of the situation of damage to U.S. citizens and to the environment when you have a foreign source originate that spill.

Why shouldn't we be protected just as much as long as the damage occurs to our citizens even though it may have originated in a foreign source?

Secretary DOLE. Of course, the cleanup aspect of it would be covered by the fund. It would be just the actual damages to the individuals that would not be covered.

Senator BENTSEN. That is correct.

Secretary DOLE. The reason why it is not covered under this regime is because it was not caused by a seagoing tanker. Otherwise it would be under the international regime.

Senator BENTSEN. But it isn't taken care of there, is it?

Secretary DOLE. It is not taken care of, not the damages. The cleanup yes; the damages no.

Senator BENTSEN. That is right. I was talking about damages.

Admiral KIME. You posed a very significant question, Senator. Obviously, this is the only one of its kind that we know of that has occurred. As Mrs. Dole said, the cleanup costs would be covered.

Senator BENTSEN. Admiral, you have enormous oilfields down there, and you have Mexico pumping everything it can pump because of its debt problems, and that current blows right up that coast. The damage was serious damage that we saw happen to our wildlife and to our coastline.

Well, I hope to see that we address that particular one.

Now, the other one, I share some of the concern my friend from Maine has about our own laws. In 1985, as a result of the *Alvinas* incident, we saw the State of Texas and its legislature bring about some major changes to try to make the State more responsive so it could get that job done. They substantially amended the State's oilspill laws to give us more flexibility. That was the result of a Governor's advisory panel that we had and a great deal of study.

We also oppose in Texas the preemption of our liability legislation and our approach to that. To date, we have seen no effect on the carriage of oil in Texas as a result of it or the insurability of vessels serving those waters due to the 1985 amendments.

Isn't it possible to have an improved National Oil Spill Program that does leave room for the States' liability schemes and State funds meeting their own perception of the need?

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Secretary DOLE. Senator Bentsen, let me discuss that for a moment. When we talk about the preemption issue, there are two facets, and I think we ought to separate them out.

As far as the preemption of a State fund, the only category that would be preempted at all would be where there is absolute duplication in this compensation area.

Senator BENTSEN. Where you have some sort of a user fee.

Secretary DOLE. Where a user fee is supporting the compensation, that is right. Now, if the user fee is used for other things, for example, to acquire equipment to be utilized in a response, prepositioning of equipment prior to a response, anything that is not here, then that user fee is perfectly appropriate for those other functions.

Also, this particular compensation function can be also provided by the State fund if it is through general revenues or bonds but not another fee on the companies. In other words, it is just narrowly ruling out where there is absolute direct duplication Even where there is the duplication, as I have said, it could still be done if it is through general revenues, but if it is through user fees, then there would be a 3-year period to allow the State time to make adjustments so that it would not be burdensome to the State.

So, I think we are talking about a fairly narrow area. And on the liability side, the international regime really depends on the preemption, if you will, of the unlimited liability. In other words, to get the insurance companies to participate in a compulsory insurance scheme, it is necessary to have some kind of limit there, as the letter from this committee recognized.

The unlimited liability does mean that the insurance companies would not be willing to join in this massive plan to cover a great deal of additional liability on the part of a shipowner. So, once again, if you look at the State situation and some of the States, New York and New Jersey, already have limited liability, this would be a much higher level than those States have in terms of the liability limits.

For those who say they don't want to have any kind of restraint, I think you have to look then at what is being received and what is being given up. Now, there is an 1851 law, the Limit of Liability Act, which says that the vessel owner's liability is limited to the value of the vessel in question after the incident plus any freight charges. This is why we see the practice in some segments of the shipping industry to incorporate separately to avoid any deep pockets.

So, when a State is talking about going after an individual in court which, of course, can be many, many years down the road, what kind of deep pockets are there? Often, there are none at all. In other words, many of these tanker firms have one ship, and it may be the ship that just cracked up on the rocks out there and that is it.

Here, in exchange for some sort of limitation, we are offering very fast resolution of the damage claims, we are offering a network that provides $200 million whereas State funds are far more limited in the amount that they would pay out, and I think the exchange there is very beneficial to the citizens who have experi-

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enced damage in some sort of catastrophic incident like the *Amoco Cadiz*.

Senator BENTSEN. Thank you, Madam Secretary. I understand my time has expired. I have a series of questions I would like to submit for answer by the Secretary.

Mr. Chairman, the Finance Committee has been in session while I have been here, and I think I better go back and see what they have done to my constituents.

Senator STAFFORD. Then you will submit your questions for response in writing, as I understand it.

Senator BENTSEN. Yes.

Secretary DOLE. Senator Bentsen, may I just say before you leave that I hope to be able to work with each member of this committee. What I would like to do is look at the State fund in each instance and see how we might work together to eliminate any concerns that there might be. I think there are ways that we can work through this together so that we can accomplish something very significant in the way of an environmental initiative this year.

Senator BENTSEN. I certainly hope we can.

Secretary DOLE. Thank you.

Senator STAFFORD. Thank you, Senator Bentsen.

Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Secretary Dole, you make a statement in your testimony about State preemption. In my statement, I raise the issue about the preemption problem that was created by ambiguous language in the Superfund. Can we get any assurances that similar litigation tying up the States' programs and funds for so many years won't occur if there is Federal preemption in oilspill legislation?

Secretary DOLE. Senator Lautenberg, that is something that I would like very much to try to work out with you. I would think that there are ways that we could provide exactly that assurance, and I know of your concerns in that area of the extensive litigation, and I feel that we could work that out together.

Senator LAUTENBERG. I hope that wishing will make it so, and since I am not a lawyer, I will rely on those around me who would keep watch to make sure that that isn't the case, because it has been a mess, as you know.

Secretary DOLE. Right; as a matter of fact, I might just add that I did become aware this morning of that particular concern, and we plan to set up a meeting with your staff next week.

Senator LAUTENBERG. Good; it is difficult to draw that line between what has been covered by Federal, what has been covered by State law. I appreciate the fact that your interest is there and that you will get on it fairly quickly.

You said in your testimony, "requirements for the same loss and costs is a lawyer's paradise." What is duplicative, what is the same, and how do you define these things? They are substantially similar in terms of what is the requirement for the same loss and cost being either claimed or litigated in the same situation?

Admiral KIME. Senator, let me take a stab at that one. We would say that the Federal fund as proposed in the House bill and meeting the precepts of what we feel should be contained in a bill would cover any spills from tank ships and tank vessels, or barges. It

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would also cover spills from Outer Continental Shelf installations and deep water port installations. It would not cover spills in State waters, either producing rigs or exploratory rigs, nor would it cover shoreside facilities in the boundaries of the State.

Senator LAUTENBERG. In your statement, you say, "We believe that States should not require contributions to funds which would in effect duplicate compensation for oil pollution loss and costs covered by the Federal trust fund." The question of what is duplicative is one that will be argued on lots of occasions to try to sort this thing out, and that is precisely the sort of thing we are afraid of.

Secretary DOLE. To make it as clear as possible, yes.

Admiral KIME. We would like to work with your staffs, as Mrs. Dole said, "to clarify that as much as possible."

Senator LAUTENBERG. You go on to say that the States should be preempted from requiring contribution to funds which would in effect duplicate compensation covered by the Federal trust fund. Let me just describe a situation that New Jersey now finds itself in.

The Federal Superfund tax was modeled after the New Jersey spill fund. The litigation began almost immediately after the passage of Superfund, centered around the issue of double taxation. Until March 10, the State prevailed in its litigation.

When the Supreme Court ruled that the Federal Superfund does preempt the State fund, that decision profoundly affected our State's ability to raise funds. The State has been told they can't raise funds from the source taxed by Superfund for funding that might be available in the Federal fund.

Yet, New Jersey and other States are receiving a fraction of the Federal funds they expected this year, because the Superfund tax, as you know, has expired and has not been reauthorized. Unless we reauthorize a fund that is sufficiently large, there will be enormous competition among States for the limited Federal funds that are available.

The Supreme Court's decision has tied the States' hands at just the time when they most need their own source of funding. It has already put at risk $52 million in revenues that the State has used for response and takes away an important revenue source to pick up future shortfalls in Federal funding.

That is why I am particularly concerned about your viewpoint, what you call the duplicative State programs and funds. Again, what assurances are there that there be an adequate fund? Senator Bentsen asked a question about the cap on the size of the fund, and we are told that the *Amoco Cadiz* claims might be as much as $600 million based on those things that are now pending.

So, how do we know that we are going to be able to continue to operate within the State if there are not adequate funds available on the Federal side?

Secretary *Dole*. I think as far as the $600 million, I think that is highly exaggerated. Our sources say it is in the range of $190 million. That is what it looks like it is going to be. So, we are looking at more than covering the largest spill that we have experienced.

As far as what the State could do in addition, this would not preclude the State using general revenues from going over the $200 million level. Or, let's say, if the State was interested in user fees

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to cover speculative damages—which we do not favor because of the time it would be tied up in court and trying to get a comprehensive system that can be administered quickly and all the rest—we feel that the speculative damages should not be covered. However, that is something the State could do that does not duplicate the Federal system. So, there is flexibility there.

Senator LAUTENBERG. Have you done a worst case analysis? Is there any way to do what could be a worst case problem? How do we know that we are going to be looking at the maximum?

Admiral KIME. Senator, I don't know if it is possible to do a total worst case analysis of the amount of damage that could be caused by an oil tanker. I think it is possible to do an assessment based on the preventive measures we take, the standards we have, and also the rather extensive spill history that we have.

Secretary DOLE. We have never had a spill over 140,000, have we?

Admiral KIME. We haven't had a spill from a tank vessel worldwide that is over 140,000 tons in size that would not have been covered by the tank vessel owner's liability under the proposed domestic and international regime which would obviously be backed up by a compulsory insurance. In fact, there have only been eight that we know of below 140,000 tons that have exceeded the insurance level that would be required of the tank vessel owner, and the largest one of those, as Mrs. Dole has mentioned, was $20 million.

You mentioned the *Amoco Cadiz* that has yet to be decided in litigation, I guess, beginning in Chicago right now.

Secretary DOLE. There is one other point here, too, from a practical standpoint. A team went over and negotiated at IMO, and some of the members of this committee recommended a $250 million level. We tried to go forward with all of the recommendations that were made by the committee. We achieved everything except two. We were not able to reach the $250 million. $200 million was the level where consensus could be reached, and that is just the way it worked. That is as far as it could be carried at the international level.

Senator LAUTENBERG. OK, but then we get into the preemption discussion once again and whether a State has the ability to add funding is a question, I think, that has got to be resolved.

Secretary DOLE. States may do that with speculative claims, with user fees or general revenues. It could add to that.

Senator LAUTENBERG. There are very few States who want to go to general revenues unless we do it with the Federal Government. That would really be an unusual recommendation, Senator Mitchell. The Secretary is recommending general revenues out of the Federal Treasury.

Secretary DOLE. No, I am not recommending. I am trying to provide you with all your options. But, by the way, just as an aside, New Jersey does have limited liability now, and this would raise your level of liability considerably, but you do not have unlimited liability in the New Jersey fund now.

Senator LAUTENBERG. OK. My time is up. Thank you.

Senator STAFFORD. Thank you, Senator

Mrs. Dole, how much longer are you available to us?

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Secretary DOLE. I am fine for a little while longer if you would like to go ahead.

Senator STAFFORD. All right. We do have a substantial number of questions yet. I ask because of time considerations for you and for the committee members, both.

Senator Mitchell, you would be next, and there will be a second round for Senators who have more questions.

Secretary DOLE. I already have a question I need to answer for Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Secretary Dole, let me say that I share the view of Senator Bentsen and other members of the committee that you are indeed a persuasive advocate, and I do look forward to working with you to try to shape legislation in this area.

As you know, I have very strong feelings about some provisions of the bill. I intend to represent those interests as effectively as I can, but I know you won't take any of my questioning as hostile to you personally. I have a very high regard for you, having worked with you on previous matters, and your very able staff, I might add.

You say in your statement the administration supports this. I would like to ask you directly, does President Reagan support the position you have expressed here today?

Secretary DOLE. Yes, he does.

Senator MITCHELL. Thank you.

Now, in your remarks, you have used the phrases "unlimited liability" and "limited liability." Those are legal sounding terms and in describing unlimited liability, you said if we don't have any kind of restraint, certain consequences may ensue.

I think it is important to put this in plain English. Unlimited liability means that if a person causes *x* amount of damage, that person must pay *x* dollars for it. Limited liability means that if a person causes *x* amount of damage, that person does not have to pay for the damage he or she has caused but some lesser amount, a limit imposed by law unrelated to the actual damages.

It is, of course, of enormous benefit to those whose liability is limited by law and to those who insure them to know in advance that no matter how much damage you may cause, you don't have to pay above a certain amount to compensate for that damage. That is the whole purpose of limited liability, and that is what it means, does it not?

Secretary DOLE. I think what we are looking at here is, first of all, trying to provide certainty rather than have the victim of the damages wait 10 years to be compensated and then possibly not have a deep pocket. In other words, the reality of it is that often there is not the deep pocket to provide funds to cover the damages.

This has very high liability levels, which means that there would be a certainty of payment. It would be done quickly, efficiently. It would be done in a way where you don't have a lot of different funds that provide no comprehensive coverage, that have a lot of gaps.

This would really provide a system that we could rely on if there is that major spill with much higher liability limits than any of the Federal legislation or any of the State funds provide.

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Senator MITCHELL. No, that is not true, is it? Does the State of Maine have an unlimited liability?

Secretary DOLE. OK. I am talking about the levels that exist in New Jersey, for example.

Senator MITCHELL. You mean where there are limits on liability, this would be higher than they are. It would obviously not be higher than States where there is no limit on liability.

Secretary DOLE. Right. I think the point is that the person going to court under unlimited liability is taking a chance that they have someone, some entity, that really has deep pockets. They may well not have. Often, the tanker companies have one tanker, and if it is broken up out there, that is it. There is this 1951 Limit of Liability Act that I mentioned which means that a vessels owners' liability is really limited to that vessel and the freight that that vessel carries.

Senator MITCHELL. I am going to get to that in a minute.

Secretary DOLE. OK, but basically you are saying here you could go all the way up to $200 million, do it quickly, it is in place, rather than taking the chance that after 10 years of the litigation, when you could have had that money all this time, you may or may not get paid.

Senator MITCHELL. What you are suggesting is that there are certain benefits that could accrue to injured parties as a result of limited liability, but that does not dispute my definition of limited liability.

Secretary DOLE. I think we have to look at the realities of how things work in the court system.

Senator MITCHELL. All right, but the fact of the matter is, you are relying upon support from the oil industry, in this case, and the insurance industry, both of which have a very real, tangible benefit from the concept of limited liability.

Secretary DOLE. Well, first of all, let me start with the insurance. The reality of the situation is, when you talk about what will really happen here, the insurance companies simply aren't going to be players in this international regime if there is not a limit on liability. If they have to be exposed to unlimited liability, we will not have this compulsory insurance network backing up this system, which is essential. That is an essential component of it.

Now, the oil companies are not liable now unless it is a vessel owned by the oil companies. We can't reach them now, anyway. It is just the vessel owner. If they own a vessel, then fine, but that is the current picture.

Senator MITCHELL. All right. That brings me to the next point. You are making what are obviously contradictory arguments in support of a single conclusion. On the one hand, you are saying that people who may be injured by an oilspill can now only get the value of the vessel and freight charges. The oil companies are outside the line of liability. So, you don't have access to any, as you put it, deep pockets to recover for damages, and we are going to do you a favor. We are going to make it possible for you to recover more quickly in compensation for your damages. That is the one argument.

Secretary DOLE. And very high limits.

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Senator MITCHELL. Yes, however you want to describe it. On the other hand, you are saying if we don't have liability limits, we can't get insurance to provide the necessary financial responsibilities for those who operate.

I don't see how you can make both arguments in support of the same conclusion.

Secretary DOLE. Let me just say that there is one simple thing that we are trying to do. We are trying to foresee another major catastrophe and have a system in place. We want to join the international conventions, where we are the only major maritime country that is not a signatory to those. Because the liability levels were too low, we went to IMO, and got them increased. We worked with this committee to do so. Now, the United States can sign the protocols. We can have something in place that will really be meaningful if there is another major spill.

In order to have the insurance companies providing the insurance to cover these very high liability limits on the vessel owners, it is necessary to have this particular unlimited liability resolved.

Senator MITCHELL. But if they can escape liability by the simple mechanism of limiting it to the vessel value and freight charges, why wouldn't they continue to do that? That is what you are saying is the case now.

Admiral KIME. Senator, they can limit that liability now. If we pass this new legislation, as a condition of being a U.S.-flag vessel or a condition of port entry, under the domestic legislation or as a condition of operating under any circumstances in the international arena under the protocols, that vessel would have to have mandatory limits of liability and hard insurance in force either domestically or internationally to back that liability up.

Senator MITCHELL. Up to the amount of $200 million.

Admiral KIME. No.

Secretary DOLE. Up to the amount of $60 million or, in the international regime with the exchange rate issue, it would be $69 million.

Senator MITCHELL. Well, if you say $200 million is the amount you want, as you put it, a very high limit. Why are you going to require mandatory insurance only up to $60 million?

Admiral KIME. Senator, the premise under which all oilspill compensation and liability regimes have been developed over the years, both the CLC and Fund protocols, the basic CLC and Fund conventions, and also the voluntary regimes, TOVALOP and CRISTAL, are predicated upon a sharing of the responsibility between the oil interest and the ship owning interest.

And we just mentioned that normally there is no avenue to get to the owner of the oil. His responsibility is taken up by a fund which tops off the ship owner's liability. It is assumed that the ship owner has the primary responsibility of avoiding the incident. He should have mandatory insurance to cover almost all of the spills that his vessels would be involved in.

If we were to pass the limits that have been proposed both in the protocols and in the domestic legislation, we would have that. Only in the very rare cases—and in a previous answer, I mentioned how few there were—would we have to call upon this supplementary

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fund. And it would be funded by the 1.3 cents per barrel tax against the oil companies.

Senator MITCHELL. Well, let me see if I understand you, Admiral. You are saying $60 million would be the mandatory coverage for the vessel owner.

Admiral KIME. It varies with size of the vessel, Senator.

Senator MITCHELL. All right. That is the maximum?

Admiral KIME. Under the international regime, it would be $69 million.

Senator MITCHELL. You would then assess the owner of the product a fee which would be paid into a fund which would provide $140 million in secondary coverage to reach the $200 million. Is that what you are describing?

Secretary DOLE. Yes. The two are complementary so that the total is $200 million.

Senator MITCHELL. The total is $200 million?

Secretary DOLE. But it would take you up to $200 million. That is the amount that would be available for any one incident.

Senator LAUTENBERG. To be sure, any incident in clear domestic waters, et cetera.

Secretary DOLE. Well, as far as the domestic situation, you would have a fund of $200 million. Then, by signing the protocols, we would have up to about $234 million. We are also contributing out of that domestic fund, and right now, with the situation the way it is, our contribution would be about $7 million a year, to the international fund. That would be paid out of the money that has been collected from the 1.3 cents per barrel.

Senator MITCHELL. All right.

Senator STAFFORD. Senator, could I interrupt just a minute? You have consumed 10 minutes, and I was going to see if Senator Lautenberg has a second round.

Senator LAUTENBERG. Well, if I could yield a minute or so of my time to Senator Mitchell, I would be pleased to do that.

Senator MITCHELL. No. Go ahead, Frank, because I have a fairly lengthy list of questions yet to go. So, out of courtesy to Senator Lautenberg, I will let him go and then continue.

Senator STAFFORD. It would be the Chair's intention, as soon as you have completed, Senator Lautenberg, to yield Senator Mitchell such time as he may need.

First of all, though, I intend to place in the record, assuming there is no objection, a letter signed by myself, Senator Randolph, and Senator Chafee on April 20, 1984, and addressed to Rear Adm. Bobby Hollingsworth, Chief of the Office of Marine Environment and Systems at the U.S. Coast Guard.

[The letter referred to follows:]

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[illegible]
[illegible]
[illegible]

Our underlying concern is that every effort should be made to assure that cleanup costs and all legitimate damage claims are fully compensated if a catastrophic spill, such as the Amoco Cadiz catastrophe, were to occur off the United States. Since cleanup and damages relating to the Amoco Cadiz incident may exceed $250 million, we believe that an upper Fund limit of $250 million -- which the French are proposing -- would be an appropriate minimum level for the revised Fund. We are inclined to suggest a higher amount, but we recognize that $250 million is the highest outstanding level that has been put forward as a serious proposal.

With respect to shipowner liability limits under the CLC, we recognize that those limits will determine the relative burden which will be borne by shipowners and cargo interest, respectively. A foremost concern to the Senate is that any liability-fund regime maximize incentives to avoid spills. This concern focuses on those who control ships and those in a position to exercise oversight of them. Therefore, liability for shipowners (and potential exposure for their insurers) must be high. A CLC level approaching the French proposal of $100 million would be appropriate. While there may be some flexibility on the upper limit, this would appear to provide a reasonable balance between shipowner and cargo interests. This maximum level should be combined with a CLC minimum level of $7-$10 million.

The mechanism for updating limits once the Convention comes into force is an especially important subset of the overall limits negotiations. If it is 1990, or thereabouts, before the revised CLC/Fund enters into force, the updating mechanism should be structured so that the Contracting States can review the adequacy of the limits immediately upon entry into force in light of such factors as inflation and more recent spill experience.

The definition of pollution damage is an issue that has come before this Committee in relation to domestic legislation on this same subject. Domestic law includes coverage for cleanup costs associated with restoration of the marine environment and damages for loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss. Section 301(c) of the Comprehensive Emergency Response, Compensation, and Liability Act provides for regulations for assessing such damages, allowing simplified assessments requiring minimal field observation. We

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are not suggesting that speculative or theoretical damage calculations be permitted. Definitional boundaries need to be drawn, but the United States position should recognize the manner in which domestic law evaluates damage to natural resources. In the event there is insufficient support for express language which parallels our domestic approach to this issue, at a minimum a definition should be sought which is sufficient to allow national courts to recognize and compensate actions that are taken to restore our marine environment and its resources, or to provide equivalent resources.

Another important issue to us is the geographical scope of coverage. While coverage under the existing CLC/Fund is limited to a Contracting State's territory, including its territorial sea, we believe that the revised CLC/Fund should expand the geographical scope to include cleanup costs and damages in all areas subject to exclusive marine resource management authority. Such coverage would conform with U. S. oil spill liability law coverage and include the 200-mile Exclusive Economic Zone (EEZ) proclaimed by the President in March, 1983 as well as the emerging customary international law status of such EEZ's.

Channeling of liability and limitations on recourse by either shipowners or spill victims is not common under U. S. law, as you know. Most domestic statutes, and our proposed domestic bill on this subject (S.976) establish strict, joint and several liability on the owner and operator, including bareboat charterers. Moreover, even with strict liability, recourse against other potentially liable parties generally is preserved explicitly. From the perspective of victim compensation, we clearly would prefer that liability be strict, joint and several, and that recourse against any potentially responsible party be retained. If that is not achievable, less severe approaches should be pursued, including efforts directed towards loosening the essentially unbreakable barrier for claimants with respect to the shipowner's entitlement to liability limits. On this latter point, U. S. laws offer better language than that contained in the draft CLC protocol. The channeling/recourse issue is an excellent example of the importance of establishing high liability and compensation limits to mitigate potential inadequacies of other provisions.

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As a general principle, for the transition from the existing CLC/Fund regime to a revised regime, we believe that the revised CLC and Fund should come into force simultaneously for the United States. One without the other makes little sense given the substantial attention and time that is being devoted to an appropriate interplay and balance between the two.

As you well know, this Committee's interest in the subject of oil spill liability and compensation is focused principally on maintaining or improving the adequacy of our domestic regime. Once the revised CLC/Fund have been opened for signature, our Committee will need to consider that regime in the context of our primary jurisdiction in the Senate over domestic implementing legislation. Obviously, the international regime is most attractive if it meets or exceeds what is available under State and Federal law, and becomes incrementally less attractive as it falls below those standards. To the extent the international regime is deficient in certain areas, yet acceptable for the purpose of providing a global "common denominator", a supplemental domestic "wrap around" regime would be required. Given such a possibility, the U. S. delegation also should seek to assure, wherever possible, that the international regime does not preclude additional measures that might be merited under domestic law. As part of this concern, bills considered or reported by this Committee recognize that there is an important continuing role for our coastal states, (e.g., Maine, New Jersey, New York, Washington, and Florida) to assist in protecting people, real and personal property and the marine environment from the inevitable occurrence of oil spills.

It is our expectation that at least one member of our Committee staff will be able to attend portions of the diplomatic conference. Such participation would give our Committee the opportunity to observe first-hand the negotiations and the final package that is developed, and will demonstrate the importance we attach to a successful conference outcome.

Following the conference, we look forward to the opportunity to review the results. Obviously, this Committee, and the Senate members of the 98th Congress can not guarantee that a revised CLC/Fund will be adequate for purposes of Senate advice and consent at some future date. Assuming the President were to

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sign and forward a revised CLC/Fund for advice and consent, the review would be undertaken by a future Congress.

Our Committee and other interested members will assist in that review. We recognize that in international negotiations it may not be possible to achieve all the positions we have proposed. If our principal concerns are met, however, or if the final package provides acceptable alternatives, we would make a good faith effort through the Committee on Environment and Public Works to develop acceptable domestic implementing legislation and to help bring the revised regimes into force for the United States. We wish you and the entire U. S. delegation success in London in achieving those objectives that are in the best interest of the United States, and in concluding the conference with agreed upon revisions that will attract widespread support.

Respectfully,

Robert T. Stafford
Chairman
Committee on Environment
and Public Works

Jennings Randolph
Ranking Minority Member
Committee on Environment
and Public Works

John H. Chafee
Chairman
Subcommittee on
Environmental Pollution

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Senator STAFFORD. Senator Lautenberg, the floor is yours.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Madam Secretary, I only have one more thing I want to clear the air on, and that is a reference that you make in your testimony that the liability of the trust fund—and here I quote directly—"should not include lost profits or taxes of the value of natural resources which are destroyed but cannot be restored."

Secretary DOLE. Yes, speculative.

Senator LAUTENBERG. I like the implication of the word "speculative." It has a kind of pejorative character to it.

Secretary DOLE. We want these damages to be clearly identifiable. The whole system is designed to be able to efficiently and quickly be able to produce results here, rather than dragging it through the courts.

Senator LAUTENBERG. Does this imply that you support compensation for damaged natural resources but not for natural resources that have been destroyed?

Secretary DOLE. If they can be replaced, we would support replacing them through the fund.

Senator LAUTENBERG. Therefore, if you damage one——

Secretary DOLE. If it is something that is destroyed that cannot be replaced, where it gets into a speculative area——

Senator LAUTENBERG. Well, we talked earlier about barriers or oyster beds. What do we do in those cases, just kind of wipe the slate clean and say there is nothing we can do about that, or should there be another opportunity for the State or the community to get compensated for the consequences of that loss? I mean, if you lose a beach barrier, you could very well lose houses or property.

Secretary DOLE. The difficulty is determining just what, for example, the lost profits would be, because something could have happened following this particular incident. In order to really be able to clarify what that would be is a very difficult thing to undertake. This would cover, of course, all of the direct damages and the identifiable ones and so on. But where it gets into the speculative area, unless the State determined that it wanted to cover those kinds of damages through whatever means, user fees or whatever, that would not be covered under this regime.

Senator LAUTENBERG. It makes it difficult, I think, to comprehend why something that is damaged that may have a lot less consequence in terms of its ultimate negative effects can be compensated for and something that is destroyed that could be disastrous in the long run doesn't have an ability to get compensation.

The House bill limits compensation for the natural resources restoration.

Secretary DOLE. I think the House bill would parallel what you are saying. In other words, we have a disagreement with the House bill on this issue. We feel it should be more narrowly defined.

Senator LAUTENBERG. That is an area of great concern. I think we ought to try to deal with it before we let it pass by which is the way I see it going.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Lautenberg.

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It would be the Chair's intention now, Senator Mitchell, to yield the floor to you without limitation, except I understand the Secretary does need to leave at 4.

Senator MITCHELL. All right. I thank you, Mr. Chairman.

Secretary Dole, I appreciate your willingness to remain.

Now, as I understood what you said earlier, the mandatory insurance coverage by the vessel owner would be responsible for the first $60 million of any loss.

Secretary DOLE. That is right. The ship owner, the vessel owner, as the party that perpetrated this, would be the first one that you go against to get compensation.

Senator MITCHELL. Now, obviously, that means that the insurance company would be called upon to pay for the loss.

Secretary DOLE. That is right. In fact, you go straight to the insurer in this system.

Senator MITCHELL. Because you are aware that that is not instant charge credit, to use your own phrase, do you support a concept in which the fund which is actually only responsible for the second $140 million, that is, after the $60 million has been consumed, would be accessible for payment of all claims up to $60 million and then would seek to be reimbursed from the insurance company?

Secretary DOLE. The way we have phrased our view of that is that there should be exhaustion of remedies first. Now, the House bill defines that, if you will, as 180 days, that if there has not been a remedy in 180 days, then the fund could be called on. The fund would then have to go after the vessel owner.

I would be willing to consider that, 180 days.

Senator MITCHELL. So, when you sit here and say we want to provide instant recovery like on a charge card, we don't want to have delays, you are really talking about a 6-month delay in recovery.

Secretary DOLE. Well, as opposed to 10 years.

Senator MITCHELL. I understand that, but 6 months isn't instant recovery. We have to get that straight.

Secretary DOLE. Let me make one thing clear, though. As far as cleanup, it is absolutely instantaneous. In other words, whoever is on the scene can start cleanup and charge it against the fund, because we want the incentives here to provide for immediate cleanup. So, that very definitely is covered immediately.

Then you have in the House bill the exhaustion of remedies which is 180 days which I really don't think is an unreasonably long period of time to try to get the vessel owner to respond, rather the insurance company immediately. Then the fund can kick in. I would have no problems with that.

Senator MITCHELL. No one would disagree that 180 days is better than 10 years. Of course, you have arbitrarily selected 10 years as a figure in your own mind, and there is no evidence to support that. Also, no one, I think, will disagree that 6 months is not instantaneous.

You have said in your statement that the *Amoco Cadiz* incident has incurred $190 million in legitimate claims. The fact of the matter is, of course, that claims far in excess of that have been filed, and unless and until a court of law acts on those claims, nei-

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ther you nor any other person can say what claim is legitimate and what claim is not legitimate.

You have no basis in law for describing a claim which has been filed in a court of law alleging damage which has not yet been heard by a court with respect to which no determination has been made by a court or jury—you have no basis to say it is not legitimate.

Secretary DOLE. All I am doing is to say to you what we have been told by any number of people involved in the matter who said they expect $190 million.

Senator MITCHELL. I can probably find any number of people involved in the matter who will say that the claims are in excess of that. I am only making a point that this is a subjective judgment by someone, we don't know whom—some unnamed person or persons who told you that—who have said that is the amount of legitimate claims. There is no objective figure involved.

I am making this point to illustrate as a predicate for my next question. Suppose the liability in a particular case exceeds $200 million, let's just say $500 million in claims. Where does the next $300 million come from?

Secretary DOLE. First of all, that question was asked earlier, and again you must make a judgment as to what is the level, from a practical standpoint, that you can go forward with. This is far and above anything that exists today.

So, I think what we are doing here is trying to put together a very effective system that is far more responsive than what we have in place right now. And that level is as high as we could achieve at IMO. We cannot go any further than that on the international regime and be able to have a consensus of all the states that they will sign and ratify the protocols.

Senator MITCHELL. But that doesn't answer my question. Where would the next $300 million come from?

Secretary DOLE. Well, we could say let's go to $800 million and where will the next——

Senator MITCHELL. Where will it come from?

Secretary DOLE. We will not be providing funds for that extra $300 million.

Senator MITCHELL. It won't be there.

Secretary DOLE. No.

The limit on this fund is $200 million which does cover, in our best judgment, the largest spill that has ever occurred within the history of the United States or the world. I don't think it is an unreasonable level. This committee suggested $250 million, so I could ask you then where would you get the additional funds. We have both come to a level here that we think is workable.

Senator MITCHELL. I don't know who you mean by this committee, but I am a member of this committee, and have not suggested $250 million.

Yes, Admiral?

Admiral KIME. Senator, if I could expand just a little bit. You mentioned just a few minutes ago that this regime we are trying to put into place has the support of the insurance companies and the oil companies. I would like to add it also has the strong support of

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the shipping industry and also a great spectrum of the environmental community.

Senator MITCHELL. Right.

Admiral KIME. I think what Mrs. Dole has indicated is that we have made a very best evaluation of what the limit on this fund ought to be, and this regime that we are proposing is much, much better for any fault that it might have than anything that is in existence right now, including unlimited liability by the States, because there is no deep pocket normally there to satisfy this.

The thing that has held up liability compensation legislation over the years, almost 15 years now, has been an inability of all the parties to agree on what this upper limit ought to be. And while we might be very conscientiously worrying about a hypothetical case in the future or one single incident such as the *Amoco Cadiz* which does not impact U.S. citizens, we are leaving virtually naked the rest of the people subjected to the smaller spills that we are talking about.

What we are faced with right now in the United States is a financial responsibility regime of $150 per ton with a minimum of $250,000. For a 100,000 deadweight tons tanker, that is $15 million. That only covers cleanup costs and it only covers natural resource damage. It does not cover third party damage.

We right now have had the private sector attempt to put in voluntary regimes with high limits of liability. That has failed. The lower limits of the TOVALOP and CRISTAL will be voted on at the end of May. They may go out.

So, really, we are totally naked, and we might look for the very best possible ever solution and may never achieve it. We think this is a very positive step in the right direction and a reasonable step.

Senator MITCHELL. Well, I don't disagree with you, admiral, except I don't believe it is necessary to preempt State funds to achieve that objective. That is my disagreement. I don't disagree with the objective. I don't disagree with the concept of legislation. I think it is a step forward. But I strongly disagree with any assertion that in order to do what you are suggesting be done, we have to preempt State funds which are operating fine, which have done the job for the people of those States, and which do not rely on access to a Federal fund.

That leads me to my next question. You have made much here of the immediate accessibility to this national fund for clean up by States. First, we have determined that there would be a 6-month delay in attempting to recover. But you said—and I think this is the relevant point—that they could go out and clean it up right away.

By that, I assume you are saying that if a spill occurred off the coast of Maine or the coast of New Jersey or the coast of Texas, the State could immediately, without calling anybody in Washington, without calling up the Coast Guard. They see a spill; they can go out and start cleaning it up and know that the Federal program is going to pay for it.

You are creating the impression here that there will be no impediment greater than now exists in the States to immediate clean up of a spill that occurs. Am I understanding what you are saying correctly?

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Secretary DOLE. Well, obviously, you are going to contact the Coast Guard. I would assume that they would contact the Coast Guard, but they can go right ahead and clean it up.

Senator MITCHELL. Do they have to get approval from the Coast Guard?

Secretary DOLE. Any spill will be repaid or can be charged against the Fund, small or large.

Senator MITCHELL. But just a minute. You are making a case here that a State will be able to respond as quickly as they now can respond.

Secretary DOLE. Right.

Senator MITCHELL. The State of Maine, if a spill occurs there, does not have to call up the Coast Guard and ask if they can clean it up under their program.

Secretary DOLE. They certainly could notify them.

Senator MITCHELL. Now you are saying you assume that they will have to call up the Coast Guard. This is important.

Secretary DOLE. Senator, the regulations have not been promulgated. The legislation is not in place.

Senator MITCHELL. That is one of the problems in passing laws anticipating what regulations will say. Every day, Mrs. Dole, up here we get regulations from Federal agencies that astonish those of us who wrote the laws which the regulations are supposed to implement.

I think it is important to get on the record.

Secretary DOLE. I will say very clearly the whole purpose of this is to make certain that there is immediate response when there is a spill and that those who are on the scene could act as agents for the Coast Guard if they are in the best position to move quickly to clean up.

Senator MITCHELL. Is it not your estimation that the State official would have to get the approval of the Coast Guard before commencing clean up?

Secretary DOLE. I have not worked out the details on that, but I can assure you the State does not have to fire anyone or have anyone lose a job. The same people who are cleaning up now can continue to clean up. The only difference is you charge it to the Federal Government. You don't pay for it yourself.

Senator MITCHELL. Then let me ask you this. You say you are willing to give them access as quickly as now under regulations. Do you object to that being written into the law?

Secretary DOLE. No.

Senator MITCHELL. All right. So, you don't object to the law specifying that if a spill occurs, a State can immediately commence cleanup without necessity of Federal approval in any form as swiftly as it now could do so under existing State laws. Mrs. Dole, your answer?

Secretary DOLE. My answer is that I am here to talk to you about a very important environmental issue and how to put a scheme into place. I am not prepared to go into every tiny detail of this. I would be delighted to work with your staff to come up with answers, but I am going to be reasonable. I am not going to sit here and say that you don't even have to notify the Coast Guard before you start cleanup.

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Senator MITCHELL. But that is not the answer you gave a few minutes ago.

Secretary DOLE. I have not worked through that, but I can assure you, and I hope my word is worth something, that the State should take immediate action, that no one will have to be eliminated from the job they are doing now. The nice thing about this is it will be paid for by the Fund, and we will work it out so that it can flow smoothly without impediments. But I certainly can't sit here and detail to you hour by hour or moment by moment how it is going to happen.

Senator MITCHELL. But, you see, that is the essence of it, Mrs. DOLE. Nobody is questioning your word. Obviously, we have great respect for you. I personally have great respect for you.

Secretary DOLE. I am not prepared to give you the details today .

Senator MITCHELL. But by the time a spill occurs, if this law is passed, you may well not be in the position you are in now. And if somebody else comes along and says, well, it isn't in the law, it isn't in the regulations, I don't know what the previous Secretary said—Admiral, what is your response to that?

Admiral KIME. Senator, I think Mrs. Dole has covered it very well, but I can be a bit specific.

Senator MITCHELL. Well, let me ask the question do you object to that being put in the law.

Admiral KIME. Not those exact words, Senator. Let me tell you what I think we would like to convey, that for a spill where the liability comes under the Federal law, the State should have a pocket of money, $20,000 or $50,000, accessible without calling anybody to initiate cleanup action. That is the amount of money we give our Federal on-scene coordinators whether they be EPA or Coast Guard for spills now under the Federal Water Pollution Control Act. There is no reason why that could not be predetermined with each State and agreement as to who the Governor would authorize to implement that.

Now, the second thing would be if it were a spill that is not covered under the jurisdiction of the Federal law, there would have to be an arrangement, again, which set up between the Coast Guard and the State government that would permit the State response mechanism with possibly nothing more than a phone call—and that is what exists right now under the FWPCA but without money up front to go out and respond to that particular spill, acting on behalf of the Federal Government.

That has worked in many States. I established such an arrangement in the State of Maryland. We place the highest quality on the effectiveness of State response.

Senator MITCHELL. Well, I just want to say that we are not against preemption solely on philosophic grounds. Indeed, in my own case, that is not a major factor.

We are against preemption on very specific grounds and one of them is immediacy of access equal to what now exists.

I have to say that it is somewhat troubling to me that you will make the general statements about immediacy of access but drawback from any specific language in the statute which would guarantee that result.

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Secretary DOLE. May I suggest that we sit down and work it through together rather than try to do it today?

Senator MITCHELL. All right.

Secretary DOLE. I would be happy to do that. We have already set up an appointment with your staff for next week, and we will be delighted to add this one to the list. If it is not set up yet, it soon will be set up.

Senator MITCHELL. All right. Well, that really is a major factor so far as I am concerned.

In your statement, Mrs. Dole, you said, "delicate compromises" have been worked out providing States with swift access to the oil-spill fund. Is that with particular States? With whom have these delicate compromises been worked out?

Secretary DOLE. With all the relevant parties. Of course, this has been underway for many years, so there have been years of discussions. At this point, there is a consensus among the interested parties in support of the plan that we have proposed today, and there have been meetings with the State fund people, I think, in most of the States at this point. Certainly there has been with the State of Maine. There have been discussions with the Attorney General, and we intend to try to bring all the parties together next week to literally sit down with the people who administer the Maine fund and the Attorney General and others to look at your specific concerns.

Senator MITCHELL. All right. Now, in your statement, as I understand it, you oppose payment for the value of natural resources that cannot be restored.

Secretary DOLE. Right.

Senator MITCHELL. Do I understand that correctly?

Secretary DOLE. Yes.

Senator MITCHELL. So, you oppose compensation for a damage so severe that the natural resource cannot be restored. In other words, if the loss is total, there is no compensation. If it is less than total, there would be some compensation.

Secretary DOLE. If it is a speculative claim, we would not favor paying for that particular damage, but that is something that the State fund could do if they felt they wanted to use their user fees to pay speculative damages.

Senator MITCHELL. I am not sure I get that. The most severely injured party would be denied compensation whereas a less severely injured party would have compensation. Could you explain to me the rationale?

Secretary DOLE. That is not necessarily the way it would work out. For example, when we say speculative claims, we are talking about, for example, an oilspill that means that you have to shut down, say, a hotel in order to clean the beaches and all. The lost profits or lost taxes that that community is not able to collect because the hotel is not in operation would not be restored.

Damaged natural resources that can be replaced would be replaced. If it is not possible, just physically not possible to replace them, then there would not be compensation.

Senator MITCHELL. I have to say there is something about that that seems really unfair.

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Secretary DOLE. Well, again, let's work through that, because I think one of the other Senators expressed a concern about that, too.

Senator MITCHELL. All right, because I really think that a more appropriate standard in our system would be that the more severe the damage, the more necessary the compensation.

Secretary DOLE. We will be glad to look at each category.

Senator MITCHELL. All right. I would like to ask in that regard, as I understand your proposal, it would permit recovery for natural resource loss only after claimants have exhausted all other remedies, that is, we wouldn't have this swift access at whatever pace to the fund. That is an additional burden not placed on other types of claims. Am I incorrect, Admiral? You are shaking your head.

Admiral KIME. That is not correct, Senator. The 180 days or whatever regime is agreed upon for ready access would apply to natural resource damages also.

Senator MITCHELL. So, there is no requirement that recovery for natural resource loss would occur only after claimants have exhausted all other remedies. You are saying there is no such requirement in the proposal you are making?

Admiral KIME. No. I think the testimony said reasonable efforts to—and Mrs. Dole indicated that the House standard was 180 days and we were willing to consider that as a reasonable effort to exhaust all remedies.

Senator MITCHELL. So, there is a requirement, and it is a reasonable requirement which you have defined as 6 months.

Secretary DOLE. It would all be treated the same. In other words, our phrase in there should be exhaustion of remedies first. The House has defined that as 180 days. We would be willing to consider the 180 days, and that would apply across the board.

Senator MITCHELL. Well, your statement says that restoration of natural resources "once claimants have exhausted all reasonable remedies against responsible parties."

I am sorry, I didn't recognize that Senator Chafee was here. I do have some other questions, but I apologize, Mr. Chairman. I will defer to Senator Chafee for his line of questions, because I have gone over my time.

Senator CHAFEE. No, Mr. Chairman. I know that Secretary Dole has to leave, and I apologize for not being here. I will seriously review the record, and I have some questions I would submit to you in writing, Mrs. Dole, and appreciate it if you could answer those.

Secretary DOLE. Fine.

Senator CHAFEE. I know you are intensely interested in this. You have taken the trouble to speak to me about it, and I will review the record and follow it closely.

Secretary DOLE. Thank you, Senator Chafee. I do feel that we have a rare opportunity here to move forward on a major environmental initiative, and I hope we can work together this year to get it done. On the international side, we need the leadership of the United States. With the help of the members of this committee, we went to IMO, we had changes made so that this country could ratify those protocols. And now the time has come to take that step.

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So, we are looking at the domestic regime as well. I will testify before the Foreign Relations Committee on the 15th on the ratification of the protocols. The two fit together to give us a comprehensive worldwide answer to an international problem.

Senator CHAFEE. Well, I think that point is an important one, because we have traditionally been a leader in the international scene, and if we don't do something, then things bog down. As you know, this committee has some problems in connection with just how to handle this legislation, what to couple it with, but I am sure the chairman has addressed those.

Thank you.

Secretary DOLE. Thank you.

Senator STAFFORD. Thank you, Senator Chafee, and without objection, at this point, I am going to place an opening statement of Senator Baucus in the record together with the previous opening statements, and then we will yield back to you, Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Secretary Dole, I would like to ask another couple of questions about the international regime. As I understand it, you have stated your support of the international regime, but I would caution you that the protocols must be considered in the context of Federal and State legislation. Implementation of the protocols would, in essence, dictate the outcome of our deliberations on domestic legislation which I think would be counterproductive to the process.

I particularly note your statement that you say the protocols reflect "the desired balance between shipowner and cargo interests."

Secretary DOLE. I believe that was one of the comments, again, that came to us in the letter from some of the committee members to consider that balance, yes.

Senator MITCHELL. Do you agree with that?

Secretary DOLE. That there should be a balance?

Senator MITCHELL. No, that the protocols reflect the desired balance between shipowners and cargo interests.

Secretary DOLE. Yes.

Senator MITCHELL. Well, as you know, the protocols only hold shipowners liable while the fund is paid by cargo interests. Plaintiffs seeking recovery must go against shipowners who are liable only for the amount of their insurance or the value of the vessel, as we have pointed out in earlier discussions.

Where in the protocols are claimants' interests considered?

Admiral KIME. Senator, I think that the balance that was reached between cargo interests and the shipping interests at IMO was without a doubt the best possible that could be reached internationally. The oil companies, as you know, have been concerned that their share was far too much. I don't think the spill history indicates that. They have embarked on an effort to get voluntary regimes, and this has unfortunately failed, because we do feel there is a need for continuing voluntary regimes during the phasein period of the protocols.

Now, at the IMO, what was done was we significantly raised the exposure of the fund so that nobody—this is the cargo interest fund—no claims would go unanswered, a major concern of this committee and certainly of us. At the same time, we significantly raised the level of exposure of the shipowner.

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As Mrs. Dole said in her testimony, the net result of that is that the cargo interests will have no more exposure than they had before. The shipowner exposure based on past spill history will be about doubled. And the most important thing is there will be no claims that would, based on the last 10 to 15 years of spill history, go unanswered.

Senator MITCHELL. But there is a big difference, Admiral, between something being the desired balance on the one hand and, on the other hand, being the best we could get in an international proceeding. I don't for a moment dispute the accuracy of your description of it in the latter terms as the best we could get in the international proceedings.

My question is, leaving that aside, Do you agree that it represents the most desirable balance of all the competing interests?

Admiral KIME. I think considering everything together, yes, it does, Senator. On this I might mention is there were no countries that did in fact vote against the protocols at the convention; they abstained. And no country abstained because they felt the ship requirements were too low. They abstained because they thought the ship levels were too high.

Secretary DOLE. Far too high. They were considerably below that, and this is a doubling of the vessel owner's liability.

Senator MITCHELL. The first $60 million.

Secretary DOLE. That is right.

Senator STAFFORD. Would the Senator be in a position to terminate pretty quickly, because we are now keeping Mrs. Dole beyond her agreed time.

Senator MITCHELL. Well, could I ask one more question, Mr. Chairman, and then I will put the rest in writing.

Senator STAFFORD. All right.

Senator MITCHELL. I apologize to the Secretary for the lengthy and at times questioning nature of the questions.

Secretary DOLE. It is all right.

Senator MITCHELL. But she understands. She is good at this.

One thing that bothered me is that you stated your preference for a national user fee for an oilspill fund. Yet, you are really supporting preemption of State user fee funds. You have said if the States want to have their own programs, they can use their own general revenues.

Why is it appropriate to have user fees for this purpose at the Federal level but not at the State level?

Secretary DOLE. It is a matter of trying to eliminate duplication and try to have this as effective and concise a system as we can without actually having the companies paying in again and again and again. In other words, the Federal system produces a very clearly defined system. Everyone understands the rules of that system. The insurance companies understand their exposure and all the rest.

A user fee, I think, is the appropriate way to go here rather than using general revenues, because we are talking about spills that are caused by the vessel owners and we are talking about contribution on the part of the oil companies. So, they are indeed paying for things that they cause rather than having general taxpayers

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who are not involved at all in picking up the burden. So, I think that is appropriate.

Now, the only place that we are talking about in any way impacting on the State funds is where it is absolutely duplicating, and that is just one aspect of what State funds are doing. That is all it is. It is simply saying let's don't have duplicative systems. The efficient way to do this and the fair way to do it, if we are going to set up a Federal regime here, is to in that one narrow instance say that there should not be duplication unless you are doing it out of your general revenues.

Senator MITCHELL. Well, I don't want to prolong this, but I will conclude by saying what you define as a narrow area is the heart of the program. It is like saying that this car is a terrific car except that it doesn't have an engine. Other than that, it is good.

You are describing the heart of the State programs as a narrow area. So, it may be narrow in point of definition, but it is the essence of the programs.

Finally, let me say that the characteristics with which you describe this clearly defined, everyone understands, including the insurance companies, that is what exists now with respect to the State programs. That is why they want to keep them.

We have cleaned up in Maine over 100 spills in 16 years. There has been no litigation. We have been very, very successful. And we listen carefully to President Reagan, and we don't think that getting the Federal Government into this area is going to make it possible for us to do this job any better or easier.

Secretary DOLE. Do you think you are prepared to handle a major spill with the State fund?

Senator MITCHELL. But you yourself have sat here and minimized the possibility of a major spill on the one hand. Now, you are raising it as a possibility on the other hand.

Secretary DOLE. It is always possible.

Senator MITCHELL. Yes, we will take our chances. That is my answer.

Thank you very much, and I apologize again if my questioning at times was a little sharp, but I appreciate your coming.

Secretary DOLE. Thank you.

Senator STAFFORD. Thank you very much, Senator. Thank you very much, Mrs. Dole and Admiral.

For the record, I am going to indicate that the Senate committee recommended a $250 million fund level but did not propose preempting rights of action under State law for claims that might exceed that sum of money. I think you will find that in the letter.

Secretary DOLE. Mr. Chairman, if you don't mind repeating that, we didn't hear it.

Senator STAFFORD. No, not at all. If we could have quiet for a minute before the committee recesses, what I wanted to point out is that while this committee recommended the $250 million fund level, we did not propose preempting the rights of action under State laws for claims that might exceed that sum of money. That is just an observation from the chairman.

Secretary DOLE. All right. Thank you very much. We look forward to working with you.

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Senator STAFFORD. I hope these matters can be worked out. The committee will stand adjourned.

[Whereupon, at 4:08 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

[Secretary Dole's written statement, a statement from the Governor cf Florida, and the bill S. 2340 follow:]

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29 APRIL 1986

STATEMENT OF SECRETARY OF TRANSPORTATION

ELIZABETH HANFORD DOLE

BEFORE THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

UNITED STATES SENATE

29 APRIL 1986

GOOD AFTERNOON MR. CHAIRMAN,

IT IS A PLEASURE FOR ME TO BE HERE TODAY TO CONVEY THE ADMINISTRATION'S CONTINUED STRONG SUPPORT FOR OIL SPILL LIABILITY AND COMPENSATION LEGISLATION INCLUDING, IN PARTICULAR, IMPLEMENTATION OF THE 1984 PROTOCOLS WHICH REVISED THE 1969 CIVIL LIABILITY (CLC) AND 1971 FUND (FUND) CONVENTIONS. WITH ME THIS AFTERNOON IS REAR ADMIRAL J. WILLIAM KIME, CHIEF OF THE COAST GUARD'S OFFICE OF MERCHANT MARINE SAFETY.

AS YOU KNOW, MR. CHAIRMAN, THERE IS WIDE AGREEMENT AMONG THE CONGRESS, THE ADMINISTRATION, THE OIL AND SHIPPING INTERESTS AND THE ENVIRONMENTAL COMMUNITY THAT IN ADDITION TO A FIRST CLASS OIL SPILL RESPONSE CAPABILITY, THIS COUNTRY NEEDS AN EQUITABLE, ADEQUATE AND COMPREHENSIVE SYSTEM TO COMPENSATE THOSE DAMAGED BY SPILLS. YET OIL SPILL LIABILITY AND COMPENSATION LEGISLATION HAS ELUDED US NOW FOR TOO MANY YEARS. I AM DETERMINED THAT THE HARD WORK OF THE CONGRESS ON THIS SUBJECT WILL COME TO FRUITION IN THIS SESSION. MY GOAL IS TO WORK WITH YOU TO ENSURE PASSAGE OF THIS IMPORTANT LEGISLATION, CONCLUDING AN EFFORT THAT HAS BEEN UNDERWAY SINCE 1975.

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RECENT SERIOUS SPILL EVENTS IN OUR WATERS HIGHLIGHT THE LONGSTANDING NEED FOR OIL SPILL LEGISLATION.

ON DECEMBER 21, 1985, THE U.S. TANKER ARCO ANCHORAGE RAN AGROUND IN PORT ANGELES HARBOR, WASHINGTON, RESULTING IN THE DISCHARGE OF ABOUT 189,000 GALLONS OF ALASKAN NORTH SLOPE CRUDE OIL. MANY SEA BIRDS WERE AFFECTED, OF WHICH HUNDREDS DIED. THE DISCHARGE HAD A SUBSTANTIAL FINANCIAL IMPACT ON THE LOCAL LUMBER INDUSTRY DUE TO ABOUT SEVEN MILLION BOARD FEET OF MARKETABLE LUMBER BEING CONTAMINATED BY THE OIL. THE TANKER OWNER ASSUMED RESPONSIBILITY FOR THE CLEANUP OF THE SPILL. REMOVAL COSTS AND THIRD-PARTY CLAIMS ARE EXPECTED TO BE SUBSTANTIAL, BUT WILL BE COVERED, FOR THE MOST PART, BY A LIABILITY AND COMPENSATION SYSTEM ESTABLISHED BY THE TRANS ALASKA PIPELINE AUTHORIZATION ACT, WHICH COVERS ONLY OIL PRODUCED ON THE ALASKA NORTH SLOPE.

IN SEPTEMBER 1985, THE PANAMANIAN TANKER GRAND EAGLE RAN AGROUND IN THE DELAWARE RIVER, RELEASING AN ESTIMATED 425,000 GALLONS OF CRUDE OIL. THE REMAINING 1.8 MILLION GALLONS WAS OFFLOADED SAFELY AT THE REFINERY WHICH WAS THE TANKER'S INTENDED DESTINATION. ALTHOUGH THE SHIPOWNERS TOOK RAPID CLEANUP ACTION, THE OIL DAMAGED SHORELINES IN DELAWARE, NEW JERSEY AND PENNSYLVANIA.

IN OCTOBER 1984, THE U.S. TANKER PUERTO RICAN SUFFERED EXPLOSIONS 10 MILES OUT OF SAN FRANCISCO. THE COAST GUARD DIRECTED THAT THE VESSEL BE TOWED SEAWARD. CONSEQUENTLY, WHEN THE VESSEL LATER BROKE IN HALF THREE DAYS LATER, WITH THE STERN SECTION SINKING AND WITH A RELEASE OF ABOUT 400,000 GALLONS OF LUBRICATING OIL, THE IMMEDIATE THREAT TO OUR COASTLINE WAS LESSENED. HOWEVER, SOME OF THE OIL DID REACH THE SENSITIVE FARALLON ISLANDS MARINE SANCTUARY AND CALIFORNIA COASTLINE. THE BOW SECTION, CONTAINING ABOUT TWO AND A HALF

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MILLION GALLONS OF OIL, WAS EVENTUALLY SALVAGED AND BROUGHT BACK INTO SAN FRANCISCO HARBOR.

A PARTICULARLY ALARMING SPILL OCCURRED IN JUNE 1984, WHEN THE BRITISH TANKER ALVENUS, CARRYING 14 MILLION GALLONS OF CRUDE OIL, GROUNDED AND FRACTURED JUST OFF THE TEXAS/LOUISIANA COAST. ALMOST TWO MILLION GALLONS OF OIL, REPRESENTING ONLY A FRACTION OF THAT WHICH WAS ONBOARD, WAS RELEASED AND MOST OF IT REACHED THE TEXAS COAST. THE REMAINING OIL WAS REMOVED FROM THE TANKER OVER A 14 DAY PERIOD DURING FAVORABLE WEATHER CONDITIONS. BAD OR EVEN MODERATE WEATHER CONDITIONS COULD HAVE RESULTED IN A TRULY CATASTROPHIC OIL SPILL.

TWO OTHER SPILLS, WHILE NOT AS DRAMATIC, WERE EXTREMELY SERIOUS DUE TO THE SENSITIVE INLAND ENVIRONMENT IN WHICH THEY TOOK PLACE. THE MOBILOIL, A U.S. FLAG TANKER, SPILLED ABOUT 200,000 GALLONS OF HEAVY INDUSTRIAL FUEL OIL FAR UP THE COLUMBIA RIVER IN OREGON, IN MARCH 1984. ALMOST 90 MILES OF RIVER BANK WAS FOULED, AS WELL AS OCEAN BEACHES UP TO 40 MILES NORTH OF THE RIVER'S MOUTH. IN 1983, THE BEOGRAD, A YUGLOSLAV FLAG TANKER, WAS INVOLVED IN A SPILL OF HEAVY FUEL OIL IN THE ST. LAWRENCE SEAWAY. INTENSIVE CLEANUP ACTIONS WERE REQUIRED ON BOTH U.S. AND CANADIAN SIDES OF THE WATERWAY.

SO YOU SEE MR. CHAIRMAN, WE HAVE NO REASON AT ALL TO BELIEVE THAT WE ARE IMMUNE FROM OIL SPILLS AND THEIR DAMAGING EFFECTS. EVEN THOUGH WE HAVE ONE OF THE BEST RESPONSE NETWORKS IN THE WORLD, AND WORK HARD TO PREVENT OIL SPILLS, ACCIDENTS WILL CONTINUE TO HAPPEN. IT IS ESSENTIAL THAT OUR CITIZENS AND OUR ENVIRONMENT HAVE THE BEST PROTECTION AND RECOURSE POSSIBLE.

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LET ME TAKE JUST A FEW MOMENTS TO POINT OUT CERTAIN DESIRABLE PROVISIONS AND FEATURES THAT I BELIEVE COMPREHENSIVE OIL SPILL LEGISLATION SHOULD CONTAIN.

FIRST, THE PRESIDENT AND THE CONGRESS ARE STRUGGLING TO FURTHER REDUCE GOVERNMENT SPENDING. WE SHOULD NOT OVERLOOK THIS OPPORTUNITY TO ELIMINATE THE UNNECESSARY COSTS RESULTING FROM THE ADMINISTRATION OF FOUR EXISTING FEDERAL FUNDS. THESE ARE THE FUNDS AUTHORIZED BY SECTION 204(C) OF THE TRANS ALASKA PIPELINE AUTHORIZATION ACT (TAPAA), SECTION 18 OF THE DEEPWATER PORT ACT, TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (OCSLAA) AND SECTION 311(K) OF THE FEDERAL WATER POLLUTION CONTROL ACT. THESE SHOULD BE REPLACED WITH A SINGLE "TRUST FUND".

THE COAST GUARD, IN THE DEPARTMENT OF TRANSPORTATION, PRESENTLY ADMINISTERS THREE OF THESE FUNDS. THE COAST GUARD HAS EXTENSIVE OIL SPILL RESPONSE AND PREVENTION EXPERIENCE AND IS HIGHLY RESPECTED IN THE COMMUNITY OF OIL SPILL EXPERTS AND LIABILITY REGIMES, BOTH NATIONALLY AND INTERNATIONALLY. IT IS WELL QUALIFIED TO MANAGE A NEW SINGLE FUND WITH EFFICIENCY AND PRUDENCE.

WITH RESPECT TO HOW TO FINANCE THE TRUST FUND, WE CONTINUE TO SUPPORT THE "USER FEE" CONCEPT RATHER THAN FINANCING FROM GENERAL REVENUES. A FEE OF NO MORE THAN 1.3 CENTS PER BARREL WOULD BE COLLECTED ON ALL CRUDE OIL "RECEIVED" AT U.S. REFINERIES, CRUDE OIL EXPORTED FROM THE U.S., IMPORTED PETROLEUM PRODUCTS, AND "IMPORTED" CRUDE OIL. THIS IS A VERY MODEST AMOUNT WHICH WOULD GENERATE SUFFICIENT FUNDS, ABOUT $74 MILLION A YEAR, BASED ON THE 1985 OIL CONSUMPTION LEVEL, TO COVER LONG TERM FUND OBLIGATIONS. WE BELIEVE THAT IT IS IMPORTANT FOR THE TRUST FUND TO BECOME SOLVENT AS SOON AS POSSIBLE. THIS

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COULD BE ACHIEVED BY TRANSFERRING THE MONIES IN THE POLLUTION FUNDS CURRENTLY MANAGED BY THE COAST GUARD, AS WELL AS THOSE IN THE TAPAA FUND, INTO THE NEW TRUST FUND. WE ALSO SUPPORT A $200 MILLION CAP PER OIL SPILL INCIDENT. THAT AMOUNT WOULD COVER THE COST OF ANY SPILL THAT HAS OCCURRED THUS FAR, WORLDWIDE. IN ADDITION WE WOULD SUPPORT TERMINATING COLLECTIONS WHEN THE FUND'S ASSETS REACHED $300 MILLION.

WITH RESPECT TO LIABILITY, WE BELIEVE THAT THE NEW REGIME SHOULD COVER VESSELS AND OUTER CONTINENTAL SHELF AND DEEPWATER PORT FACILITIES, LEAVING ONSHORE FACILITIES AND FACILITIES IN STATE WATERS TO STATE LAWS. THIS, WE FEEL, WOULD REPRESENT AN APPROPRIATE ALLOCATION OF RESPONSIBILITY BETWEEN FEDERAL AND STATE LAW. HOWEVER, IF IT IS THE SENSE OF THE CONGRESS THAT EXTENSION OF THE NEW SYSTEM TO CERTAIN ONSHORE FACILITIES AND FACILITIES LOCATED IN THE NAVIGABLE WATERS OF THE U.S. WOULD BE IN THE BEST NATIONAL INTEREST, WE COULD CONSIDER SUPPORTING THAT OPTION.

WE ALSO BELIEVE THAT, WHERE FEDERAL LEGISLATION PROVIDES A REMEDY FOR OIL POLLUTION LOSS AND COSTS, STATE LEGISLATION ESTABLISHING LIABILITY AND FINANCIAL RESPONSIBILITY REQUIREMENTS FOR THE SAME LOSS AND COSTS SHOULD BE MERGED INTO THE FEDERAL SYSTEM. SIMILARLY, WHILE CONSIDERATION SHOULD BE GIVEN TO STATES WHICH HAVE IN THE PAST INVESTED IN OIL POLLUTION PROTECTION FOR THEIR CITIZENS, WE BELIEVE THAT STATES SHOULD NOT REQUIRE CONTRIBUTIONS TO FUNDS WHICH WOULD IN EFFECT DUPLICATE COMPENSATION FOR OIL POLLUTION LOSS AND COSTS COVERED BY THE FEDERAL TRUST FUND. THIS APPROACH PROVIDES FOR UNIFORMLY HIGH LIMITS OF LIABILITY, BACKED WITH ENFORCEABLE FINANCIAL RESPONSIBILITY REQUIREMENTS AND A SUBSTANTIAL FUND WITH AN ASSURED SOURCE OF REVENUE, WHILE PREVENTING A PATCHWORK OF OVERLAPPING AND CONFLICTING SYSTEMS.

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STATES WITH EXISTING OIL SPILL FUNDS SHOULD HAVE A REASONABLE TIME TO ADJUST TO THE NEW REGIME. THREE YEARS, AS PROPOSED BY THE HOUSE, SHOULD PROVIDE THOSE STATES SUFFICIENT TIME TO ADJUST THEIR SYSTEMS WITHOUT PENALIZING INNOCENT PARTIES OR UNDULY BURDENING THE CONTRIBUTORS TO THE SYSTEM'S FUNDS. SIGNIFICANTLY, HOWEVER, THERE SHOULD BE NO PROHIBITION OF STATES' COLLECTING FUNDS WHICH FINANCE THE PURCHASE OR PREPOSITIONING OF CLEANUP AND REMOVAL EQUIPMENT AND OTHER PREPARATIONS FOR REMOVAL OF OIL SPILLS. IN ADDITION, STATES WOULD NOT BE PREVENTED FROM USING GENERAL REVENUES OR OTHER REVENUE SOURCES NOT BASED ON A FEE ON OIL TO MAINTAIN THEIR OWN CLEANUP, RESPONSE AND DAMAGE FUNDS. WHERE STATES INITIATE EMERGENCY CLEANUP EFFORTS MONIES FROM THE FEDERAL TRUST FUND CAN BE, AND SHOULD BE MADE IMMEDIATELY AVAILABLE TO COVER THE COSTS OF SUCH REMOVAL EFFORTS. THE COMPROMISES WHICH HAVE BEEN WORKED OUT ON THIS ISSUE ARE DELICATE ONES AND I WOULD URGE THAT THEY NOT BE RE-OPENED. ON THE OTHER HAND, WE CERTAINLY STAND READY TO DISCUSS THIS ISSUE IF BROADLY ACCEPTABLE SOLUTIONS CAN BE THE RESULT.

A MAJOR CONCERN OF OURS IS THAT THE TRUST FUND MUST BE LIABLE ONLY FOR OIL SPILL REMOVAL COSTS AND FOR CERTAIN CLEARLY IDENTIFIABLE DAMAGES. THE FUND SHOULD NOT BE OPEN TO THEORETICAL OR SPECULATIVE CLAIMS. ITS LIABILITY SHOULD NOT INCLUDE LOST PROFITS OR TAXES OR THE VALUE OF NATURAL RESOURCES WHICH ARE DESTROYED BUT CANNOT BE RESTORED. THE FUND SHOULD BE LIABLE FOR COSTS TO REPLACE OR RESTORE PERSONAL OR REAL PROPERTY AND THE COSTS TO A STATE OR THE FEDERAL GOVERNMENT FOR THE ACTUAL REPLACEMENT OR RESTORATION OF NATURAL RESOURCES, ONCE CLAIMANTS HAVE EXHAUSTED ALL REASONABLE REMEDIES AGAINST RESPONSIBLE PARTIES.

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THE TRUST FUND SHOULD COVER THE COST OF ADMINISTERING THE ACT WHICH ESTABLISHES IT. THESE WOULD INCLUDE THE FUND'S OWN CLAIMS SETTLEMENT AND LITIGATION COSTS, AND ALSO COSTS OF ADMINISTERING THE COMPULSORY FINANCIAL RESPONSIBILITY SYSTEM. FEDERAL ON-SCENE COORDINATORS SHOULD BE ABLE TO DRAW DIRECTLY ON THE FUND TO SUPPORT THEIR OIL SPILL RESPONSE EFFORTS. IF THERE IS NO RESPONSIBLE PARTY (EITHER BECAUSE NO RESPONSIBLE PARTY HAS BEEN IDENTIFIED OR THAT PARTY IS ENTITLED TO A LEGAL DEFENSE), ANYBODY SHOULD BE ABLE TO FILE CLAIMS AND COLLECT FROM THE FUND FOR THOSE CLEANUP COSTS WHICH THEY INCUR. FURTHER, RESPONSIBLE PARTIES SHOULD BE ENCOURAGED TO RESPOND TO THEIR OWN DISCHARGES, BY ALLOWING THEM TO RECOVER THEIR COSTS FROM THE FUND WHEN THEY HAVE A DEFENSE TO THEIR LIABILITY, AND TO RECOVER THOSE COSTS, OR A PORTION THEREOF, WHEN THEY ARE ENTITLED TO LIMIT THEIR LIABILITY. THIS WILL ENCOURAGE RESPONSIBLE PARTIES TO INITIATE IMMEDIATE REMOVAL AND CLEANUP.

AS TO THE LIMITS OF LIABILITY, THOSE PRESENTLY RECOMMENDED BY THE HOUSE OF REPRESENTATIVES (TITLE IV OF H.R. 2005), EXCEPT IN ONE AREA OF CONCERN, HAVE OUR FULL SUPPORT. THESE LIMITS ARE, FOR A VESSEL OTHER THAN A TANKER $500,000 OR $300 PER GROSS TON WHICHEVER IS GREATER, FOR A TANKER $3,000,000 OR $420 PER GROSS TON, WHICHEVER IS GREATER (BUT NOT TO EXCEED $60,000,000), AND FOR A FACILITY $50,000,000. HOWEVER WE HAVE NOT YET RATIONALIZED WHY THE LIMITS OF LIABILITY FOR AN INLAND OIL BARGE (WHICH ARE ONLY $150,000 IN THE HOUSE BILL) SHOULD BE LESS THAN THAT FOR TANKERS OR, WHY THOSE LIMITS SHOULD NOT BE AT THE VERY LEAST EQUIVALENT TO THAT OF VESSELS OTHER THAN TANKERS. WE ALSO STRONGLY BELIEVE THAT ADEQUATE LIMITS OF LIABILITY AND FINANCIAL RESPONSIBILITY, BACKED BY A VIABLE FUND, ARE PREFERABLE TO UNLIMITED LIMITS OF LIABILITY WITH ATTENDANT UNCERTAINTY OF RESOLUTION.

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TWO ADDITIONAL POINTS, MR. CHAIRMAN ON THE DOMESTIC PROVISIONS.

FIRST, A SINGLE FEDERAL OIL POLLUTION DAMAGE LIABILITY SYSTEM SHOULD BE BACKED WITH FINANCIAL RESPONSIBILITY REGIMES FOR VESSELS AND FOR OUTER CONTINENTAL SHELF AND DEEPWATER PORT FACILITIES. THE OUTER CONTINENTAL SHELF FACILITY REGIME SHOULD BE AN IMPROVEMENT UPON THAT WHICH CURRENTLY EXISTS. PROVISIONS RELATING TO THE IDENTITY OF THE RESPONSIBLE PARTY SUCH AS THOSE FOUND IN THE HOUSE BILL WOULD ACCOMPLISH THIS. IN ADDITION, MORE EFFECTIVE SANCTIONS (INCLUDING AUTHORITY TO TERMINATE OPERATIONS) ARE REQUIRED FOR THE FAILURE TO COMPLY WITH FINANCIAL RESPONSIBILITY REQUIREMENTS.

AND SECOND, WE WOULD STRONGLY OPPOSE ANY BILL USED AS A VEHICLE FOR SUBSTANTIVE AMENDMENTS TO TAPAA OR OCSLAA WHICH ARE NOT PURELY WITHIN THE SPHERE OF OIL SPILL LIABILITY AND COMPENSATION.

THIS BRINGS ME TO A POINT IN MY TESTIMONY WHICH IS OF CRITICAL IMPORTANCE TO US. WE STRONGLY SUPPORT THE 1984 PROTOCOLS TO THE 1969 CIVIL LIABILITY AND 1971 FUND CONVENTIONS (CLC AND FUND) RELATING TO SEAGOING TANKER OIL POLLUTION DAMAGE LIABILITY. THESE PROTOCOLS WERE ADOPTED AT THE 1984 INTERNATIONAL MARITIME ORGANIZATION (I.M.O.) DIPLOMATIC CONFERENCE CONVENED TO UPDATE THE CONVENTIONS.

OUR VIEW IS THAT ANY COMPREHENSIVE OIL SPILL REGIME MUST INCLUDE IMPLEMENTATION OF THE INTERNATIONAL REGIMES ESTABLISHED BY THE PROTOCOLS. BOTH SECRETARY OF STATE SHULTZ AND I AGREE THAT THEIR RATIFICATION SHOULD PROCEED WITHOUT DELAY. PRESIDENT REAGAN FORWARDED THE PROTOCOLS TO THE SENATE FOR ADVICE AND CONSENT ON NOVEMBER 5, 1985, AND I WILL BE TESTIFYING BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON THE PROTOCOLS ON MAY 15, 1986.

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INCLUDED WITH THE PRESIDENT'S RECOMMENDATION IS A DETAILED REPORT BY THE DEPARTMENT OF STATE FOR THE SENATE'S CONSIDERATION. I RECOMMEND THIS REPORT TO THE MEMBERS OF THIS COMMITTEE. IN THE MEANTIME, LET ME JUST BRIEFLY SUMMARIZE THE CIVIL LIABILITY AND FUND REGIME WHICH IS ESTABLISHED BY THE PROTOCOLS.

THAT REGIME ESTABLISHES A CLEAR, INTERNATIONALLY RECOGNIZED STANDARD OF LIABILITY FOR TANKER OWNERS. JURISDICTION IS CLEARLY ESTABLISHED IN THE COURTS OF THE COUNTRY WHERE DAMAGE OCCURS AND THE SHIPOWNER'S LIABILITY IS BACKED BY AN INTERNATIONALLY ENFORCED COMPULSORY INSURANCE SYSTEM. JUDGMENTS RENDERED IN COURTS HAVING JURISDICTION UNDER THE CIVIL LIABILITY CONVENTION MUST BE RECOGNIZED IN COURTS OF OTHER COUNTRIES WHICH ARE PARTIES TO THE CONVENTION.

AS REVISED BY THE 84 PROTOCOLS THE CONVENTIONS WILL COVER OIL POLLUTION CLEANUP COSTS AND DAMAGE:

- SUSTAINED BY GOVERNMENTS AND PRIVATE PARTIES, INCLUDING REASONABLE MEASURES ACTUALLY UNDERTAKEN OR TO BE UNDERTAKEN TO REINSTATE THE ENVIRONMENT,

- FROM SEAGOING TANKERS, LADEN OR UNLADEN, AND COMBINATION CARRIERS WHEN CARRYING PERSISTENT OIL IN BULK AS CARGO,

- SEAWARD TO THE OUTER EDGE OF THE EXCLUSIVE ECONOMIC ZONE (200 MILES),

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- INCLUDING PRE-SPILL PREVENTIVE MEASURES, WHEREVER TAKEN, AS A RESULT OF GRAVE AND IMMINENT THREATS OF DAMAGE.

AT THE CURRENT EXCHANGE RATES THE REVISED CLC PROVIDES A MINIMUM VESSEL LIABILITY OF 3.5 MILLION DOLLARS FOR VESSELS OF 5,000 GROSS TONS AND BELOW. FOR LARGER VESSELS LIABILITY WOULD BE 3.5 MILLION DOLLARS PLUS 434 DOLLARS PER GROSS TON GREATER THAN 5,000 TO A MAXIMUM OF 69 MILLION DOLLARS.

THE REVISED FUND CONVENTION PROVIDES A TOTAL INCIDENT COVERAGE OF 156 MILLION DOLLARS. THE COVERAGE CAN BE EXPANDED TO 231 MILLION DOLLARS WHEN 3 PARTY COUNTRIES WHOSE COMBINED TOTAL OIL RECEIPTS REACH 600 MILLION TONS PER YEAR. SINCE U.S. CONTRIBUTING OIL APPROXIMATES 450 MILLION TONS PER YEAR, U.S. RATIFICATION WOULD VIRTUALLY ASSURE EXPANDED COVERAGE.

NOTE: AMOUNTS IN DOLLARS ARE BASED ON SPECIAL DRAWING RIGHTS (SDRs). SDRs ARE CONVERTED INTO NATIONAL CURRENCIES ON THE BASIS OF THE DAILY QUOTATIONS OF THE SDR BY THE INTERNATIONAL MONETARY FUND.

I BELIEVE THAT THE PROTOCOLS OFFER EXCELLENT INSURANCE TO THE UNITED STATES WITH RESPECT TO OIL POLLUTION FROM FOREIGN FLAG TANKERS. FOR EXAMPLE, A JUDGMENT RENDERED IN A U.S. COURT AGAINST A FOREIGN VESSEL OWNER WOULD BE ENFORCEABLE, NOT ONLY IN THE FLAG STATE OF THE VESSEL IF THAT STATE WERE A PARTY, BUT IN THE STATE OF THE VESSELS' INSURER (MOST OFTEN ENGLAND) IF THAT STATE WERE A PARTY. AS I POINTED OUT EARLIER, OUR RESPONSE AND PREVENTION EFFORTS ARE AMONG THE BEST IN THE WORLD. HOWEVER, AS OUR RECENT SPILL HISTORY INDICATES, WE CAN EXPECT OCCASIONAL SPILLS OF OIL FROM BOTH U.S. AND FOREIGN FLAG VESSELS, EVEN THOUGH BOTH CATEGORIES OF VESSELS GENERALLY ADHERE TO THE

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SAME FINE INTERNATIONAL SAFETY AND ENVIRONMENTAL STANDARDS DEVELOPED AT I.M.O. WHEN FULLY IMPLEMENTED THE PROTOCOLS WOULD GIVE US THE LEVEL OF PROTECTION NEEDED IN THE EVENT OF A SPILL LIKE THE "AMOCO CADIZ" (THE LARGEST TANKER SPILL IN HISTORY), WHERE THE LEGITIMATE CLAIMS MAY REACH 190 MILLION DOLLARS.

BUT WHAT DOES THIS COST US? A RECENT INDEPENDENT STUDY COMMISSIONED BY THE COAST GUARD SHOWS THAT THE PERCENTAGE OF THE TOTAL OPERATING COSTS TO TANKERS FOR INSURANCE WOULD BE SMALL, .069% AND .14% RESPECTIVELY FOR 20,000 AND 60,000 GROSS REGISTERED TON TANKERS.

WITH RESPECT TO THE FUND PROTECTION, BASED ON WORLDWIDE SPILL HISTORY BETWEEN 1970 AND 1982, OUR AVERAGE ANNUAL CONTRIBUTION WOULD BE LESS THAN SEVEN MILLION DOLLARS (ABOUT TEN PER CENT OF THE ANNUAL TRUST FUND COLLECTION) OR LESS THAN TWO TENTHS OF ONE CENT PER BARREL OF OIL. WE WOULD EXPECT TO RECOVER ABOUT 2.5 MILLION DOLLARS EACH YEAR LEAVING A NET COST OF ONLY 4.5 MILLION DOLLARS PER YEAR, OR ABOUT ONE TENTH OF ONE CENT PER BARREL.

HOWEVER, THE NET BENEFIT TO THE UNITED STATES IF WE EXPERIENCE ONLY ONE ALVENUS INCIDENT ONCE IN A 13 YEAR PERIOD, WHERE CLAIMS HAVE BEEN ASSERTED IN THE 100 MILLION DOLLAR RANGE, WOULD BE 0.6 MILLION DOLLARS PER YEAR. YOU WILL RECALL THAT THE ALVENUS SPILLED ONLY A SMALL PORTION OF ITS CARGO.

BY RAISING BOTH CLC AND FUND LIMITS SUBSTANTIALLY, THE 1984 PROTOCOLS WILL HAVE THE EFFECT OF SHIFTING OTHERWISE UNCOMPENSATED COSTS ONTO THE FUND BUT WILL ALSO SHIFT A PORTION OF FUND COSTS ONTO THE SHIPOWNERS. THE NET RESULT IS LIKELY TO BE A DOUBLING OF THE PROPORTION OF MAJOR SPILL COSTS FALLING TO THE SHIPOWNER'S ACCOUNT, VIRTUALLY NO CHANGE IN THE BURDEN PLACED ON THE FUND, AND NO CASES IN WHICH DAMAGED PARTIES WOULD GO UNCOMPENSATED.

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THE NEW LIMITS EXTEND SHIPOWNERS' LIABILITY SHARPLY UPWARDS, PLACING THE INSURANCE BURDEN FOR ALMOST ALL SPILLS ON THE PARTY RESPONSIBLE FOR SAFE VESSEL OPERATIONS. THE FUND WOULD ONLY BE INVOLVED IN CATASTROPHIC INCIDENTS, WHERE TIMING AND LOCATION CANNOT BE ACCURATELY FORECAST.

OUR PARTICIPATION AT THE DIPLOMATIC CONFERENCE WHICH REVISED THE CONVENTIONS FOCUSED ON ACHIEVING REVISIONS TO MAKE BOTH CONVENTIONS ACCEPTABLE TO THE UNITED STATES. MR. CHAIRMAN, YOU WILL RECALL THE APRIL 20, 1984 LETTER FROM THE LEADERSHIP OF THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS PROVIDED VIEWS ON SEVERAL OUTSTANDING ISSUES TO BE CONSIDERED AT THE CONFERENCE. I AM PLEASED TO NOTE THAT WE HAVE ACHIEVED SUBSTANTIALLY ALL OF THESE SUGGESTIONS CONTAINED IN THAT LETTER. I WAS PLEASED TO VISIT I.M.O. HEADQUARTERS DURING THE DIPLOMATIC CONFERENCE TO PLACE EMPHASIS ON THE IMPROVEMENTS YOU DESIRED.

THE COMMITTEE SUGGESTED A FUND UPPER LIMIT OF $250 MILLION, A MINIMUM CLC LIMIT OF $7 TO $10 MILLION, AND A CLC UPPER LIMIT OF $100 MILLION. THE COMMITTEE ALSO CITED THE NEED FOR ASSURANCE THAT ALL LEGITIMATE DAMAGE CLAIMS (CITING THE AMOCO CADIZ OIL SPILL) SHOULD BE COMPENSATED, AND FOR A BALANCE BETWEEN SHIPOWNER AND FUND EXPOSURE. THE "PACKAGE" AGREED ON, THE UPPER LEVELS OF WHICH WERE HEAVILY INFLUENCED BY THE U.S. DELEGATION, IS WIDELY HELD TO BE THE BEST POSSIBLE UNDER THE CIRCUMSTANCES AND REFLECTS THE DESIRED BALANCE BETWEEN SHIPOWNER AND CARGO INTERESTS.

FURTHER, THE COMMITTEE SUGGESTED AN UPDATING MECHANISM STRUCTURED TO ALLOW A REVIEW OF THE ADEQUACY OF LIMITS IMMEDIATELY ON ENTERING INTO FORCE. THIS

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TOO, WE SUBSTANTIALLY ACHIEVED. SIMPLY STATED, AFTER DECEMBER 1989 AND ENTRY INTO FORCE, A PROPOSAL BY ONE FOURTH OF THE CONTRACTING STATES TO UPDATE THE LIMITS MAY BE REVIEWED BY THE I.M.O. LEGAL COMMITTEE AND ADOPTED BY A TACIT AMENDMENT PROCEDURE.

THE COMMITTEE ALSO SOUGHT A DEFINITION OF POLLUTION DAMAGE WHICH WOULD COMPENSATE ACTIONS TAKEN TO RESTORE OUR MARINE ENVIRONMENT AND ITS RESOURCES, OR TO PROVIDE FOR EQUIVALENT RESOURCES. THE DEFINITION AGREED ON AT THE CONFERENCE PROVIDES COMPENSATION FOR (1) LOSS OF PROFIT FROM ENVIRONMENTAL IMPAIRMENT, AND (2) REASONABLE MEASURES OF REINSTATEMENT (ACTUALLY TAKEN OR TO BE UNDERTAKEN) OF AN IMPAIRED ENVIRONMENT, INCLUDING NATURAL RESOURCES. HOWEVER, IT DOES NOT INCLUDE PROVISIONS FOR "EQUIVALENT RESOURCES" SUCH AS PROVIDING A SUBSTITUTE FOR A NATURAL REEF IRREPARABLY DAMAGED. WE INTEND TO PROVIDE AN "UNDERSTANDING" WITH OUR INSTRUMENT OF RATIFICATION THAT WOULD TEND TO LIMIT THE FUND'S (THEREFORE, U.S. CONTRIBUTIONS') EXPOSURE TO SPECULATIVE CLAIMS. THIS, COUPLED WITH OUR SEAT ON THE FUND ASSEMBLY AND SPECIAL AD HOC COMMITTEES TO CONSIDER CLAIMS WILL ENSURE THE PRUDENT ADMINISTRATION OF THE MONIES IN THE FUND.

THE COMMITTEE'S HOPE THAT THE PROTOCOLS' SCOPE INCLUDE THE "200 MILE EEZ" WAS ATTAINED, AS I MENTIONED EARLIER.

THE COMMITTEE EXPRESSED A PREFERENCE THAT OWNER AND OPERATOR LIABILITY BE STRICT, JOINT AND SEVERAL, AND THAT RECOURSE AGAINST ANY POTENTIALLY RESPONSIBLE PERSON BE RETAINED, OR ALTERNATIVELY, LOOSENING THE ESSENTIALLY UNBREAKABLE LIABILITY LIMITATION. THE PROTOCOLS ESTABLISH A STRICT LIABILITY STANDARD EXCLUSIVELY FOR THE SHIPOWNER. IT IS, HOWEVER, BACKED UP BY AN

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INTERNATIONALLY ENFORCED COMPULSORY FINANCIAL SECURITY (INSURANCE) REQUIREMENT. FINALLY, THE CLC PROTOCOL CONTAINS A NEARLY UNBREAKABLE STANDARD CONTROLLING THE OWNER'S ENTITLEMENT TO LIMIT LIABILITY.

AS A GENERAL PRINCIPLE, THE COMMITTEE FELT THAT WITH RESPECT TO TRANSITION FROM THE EXISTING CLC/FUND REGIME TO THE REVISED REGIME, BOTH 84 PROTOCOLS SHOULD COME INTO FORCE FOR THE UNITED STATES AT THE SAME TIME. THE PROTOCOLS INCLUDE A MECHANISM WHICH WILL BE USED BY THE UNITED STATES TO EFFECT THAT RESULT. THIS MECHANISM ALSO WILL ENSURE THAT WE DO NOT PARTICIPATE IN THE COMPLEX TRANSITIONAL PERIOD BETWEEN CURRENT EXCLUSIVE CLC/FUND APPLICATION AND EXCLUSIVE PROTOCOL APPLICATION, AND EVEN MORE IMPORTANTLY, THAT WE DO NOT PARTICIPATE IN THE 1984 FUND REGIME UNTIL THERE ARE AT LEAST 750 MILLION TONS OF CONTRIBUTING OIL INCLUDED WITHIN THE SCHEME. THIS WILL PROVIDE A BETTER DISTRIBUTION OF COSTS TO THE PARTIES.

FINALLY, THE COMMITTEE EXPRESSED A DESIRE TO ASSURE THAT LIABILITY AND COMPENSATION LEVELS UNDER THE NEW REGIME MEET OR EXCEED THOSE AVAILABLE UNDER STATE OR FEDERAL LAW AND DO NOT PRECLUDE ADDITIONAL MEASURES THAT MIGHT BE MERITED UNDER DOMESTIC LAW. THE LIABILITY REGIME UNDER THE CLC PROTOCOL (WHEN IT ENTERS INTO FORCE) WILL REQUIRE PREEMPTION OF DOMESTIC LAW ON THE SUBJECT OF SEAGOING TANKER OWNER LIABILITY. HOWEVER, THE OWNERS' LIABILITY LEVELS UNDER THE PROTOCOL REGIME ($69 MILLION, BASED ON CURRENT DOLLAR SDR) CURRENTLY EXCEED THOSE CONTAINED IN THE RELATED DOMESTIC PROPOSAL ($60 MILLION, BASED ON TITLE IV OF H.R. 2005) PRESENTLY UNDER CONGRESS' CONSIDERATION.

WE RECOGNIZE THE NEED FOR THE INTERIM VOLUNTARY REGIMES FOR OIL SPILL LIABILITY AND COMPENSATION PROVIDED BY TANKER OWNERS AND OIL INTERESTS,

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TOVALOP AND CRISTAL. PENDING THE COMING INTO FORCE OF THE PROTOCOLS, WE WOULD WELCOME A SIMILAR REGIME WHICH OFFERS EQUITABLE DISTRIBUTION OF COSTS AND CONTAINS, AS NEARLY AS POSSIBLE, PROVISIONS COMPATIBLE WITH, AND BENEFITS TO U.S. CITIZENS THE SAME AS, THOSE OFFERED BY THE PROTOCOLS. HOWEVER, WE DO NOT SEE A VOLUNTARY REGIME AS A SOLUTION TO THE LONG TERM PROBLEM; BECAUSE THEY ARE VOLUNTARY, SUBJECT TO TERMINATION AT ANY TIME, AND THE U.S. DOES NOT HAVE A SAY IN THE SETTLEMENT PROCESS UNDER THESE REGIMES. IN FACT RECENT DEVELOPMENTS HAVE PLACED THE FUTURE OF TOVALOP AND CRISTAL IN QUESTION. THE INTENDED REPLACEMENT HAS FAILED TO ATTRACT THE NECESSARY PARTICIPATION TO BRING IT INTO FORCE AND MAY CAUSE DISSOLUTION OF THE PRESENT SYSTEM, DEPENDING ON THE REACTION OF CRISTAL CONTRIBUTORS. THIS SHARPENS THE FOCUS ON WHY WE NEED A GOVERNMENTAL REGIME VERSUS A VOLUNTARY ONE. APPARENTLY THE EFFORTS TOWARD AN INTENDED REPLACEMENT REGIME HAVE FAILED AND IT IS UNSURE AT THIS TIME IF TOVALOP AND CRISTAL WILL CONTINUE.

LAST DECEMBER, THE HOUSE OF REPRESENTATIVES PASSED COMPREHENSIVE OIL SPILL LIABILITY AND COMPENSATION LEGISLATION THAT INCLUDES THE KEY FEATURES JUST DISCUSSED, AS TITLE IV OF H.R. 2005. SPECIFICALLY, TITLE IV WOULD IMPLEMENT THE 1984 PROTOCOLS TO CLC AND FUND, FINANCE THE DOMESTIC OIL SPILL FUND THROUGH USER FEES, SET HIGH YET FAIR LIABILITY LIMITS (EXCEPT FOR INLAND OIL BARGES), MERGING DUPLICATIVE STATE REGIMES INTO THE FEDERAL SYSTEM, AFTER AN APPROPRIATE TRANSITION PERIOD. THE ADMINISTRATION SUPPORTS THE APPROACH TAKEN IN THIS LEGISLATION, ALTHOUGH IT OPPOSES FEDERAL FUND COMPENSATION OF ECONOMIC DAMAGES SUCH AS LOST WAGES OR TAXES, THE REBATE OF MONIES IN THE TRANS ALASKA PIPELINE FUND AND THE LOW LIABILITY LIMITS FOR INLAND OIL BARGES.

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29 APRIL 1986

NOW, I WOULD LIKE TO TURN TO THE COMMITTEE'S OIL POLLUTION LIABILITY AND COMPENSATION LEGISLATION, S. 2340. WHILE IT DOES CONSOLIDATE THE EXISTING PATCHWORK OF FEDERAL OIL SPILL LEGISLATION AND ESTABLISH A FEDERAL FUND TO COMPENSATE THE VICTIMS OF OIL POLLUTION, IT DOES NOT CONTAIN THE FOUR KEY ELEMENTS I CONSIDER ESSENTIAL.

- IMPLEMENTATION OF THE 1984 PROTOCOLS TO THE CLC AND FUND CONVENTIONS;
- A FINANCING MECHANISM;
- COMPENSATION FOR THE VICTIMS OF POLLUTION DAMAGE FOR REMOVAL AND CLEANUP, PROPERTY DAMAGE, NATURAL RESOURCE RESTORATION OR REPLACEMENT AND ADMINISTRATION COSTS; AND
- MERGING DUPLICATIVE STATE REGIMES INTO THE FEDERAL SYSTEM, AFTER AN APPROPRIATE TRANSITION PERIOD.

MAJOR CHANGES TO THIS LEGISLATION WOULD BE NECESSARY BEFORE THE ADMINISTRATION COULD GIVE IT ITS SUPPORT.

THE ADMINISTRATION STRONGLY BELIEVES THAT DOMESTIC LEGISLATION MUST PROCEED IN TANDEM WITH RATIFICATION OF THE 1984 PROTOCOLS TO CLC AND FUND AND SHOULD THEREFORE INCLUDE IMPLEMENTING LANGUAGE FOR THE PROTOCOLS AND MUST ALSO INCLUDE THE MAJOR ELEMENTS JUST NOTED ABOVE.

IN CONCLUSION, I WOULD LIKE TO STRESS THE NEED FOR MAINTAINING THE BROAD SUPPORT AMONG AFFECTED INTERESTS. OKLY WITH THE COMBINED SUPPORT OF THE OIL AND SHIPPING INDUSTRIES, THE STATES AND ENVIRONMENTAL INTERESTS CAN WE HOPE TO ACHIEVE A VIABLE AND COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION REGIME WHICH TRULY SERVES THE OVERALL PUBLIC INTERESTS.

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ONE LAST POINT MR. CHAIRMAN, AS YOU ARE PROBALBY AWARE, THE ADMINISTRATION BELIEVES THAT OIL SPILL LIABILITY AND COMPENSATION LEGISLATION SHOULD PROCEED ON ITS OWN TRACK AND NOT AS PART OF THE SUPERFUND REAUTHORIZATION.

MR. CHAIRMAN, THIS CONCLUDES MY OBSERVATIONS ON THE GENERAL SUBJECT OF OIL SPILL LIABILITY AND COMPENSATION LEGISLATION. I THINK IT IS HIGH TIME THAT OUR PUBLIC IS AFFORDED THE BENEFITS OF A COMPREHENSIVE OIL SPILL LIABILITY AND COMPENSATION SYSTEM THAT INCLUDES THE 1984 PROTOCOLS TO CLC AND FUND. I AM LOOKING FORWARD TO WORKING TOGETHER TO RESOLVE PROMPTLY ANY REMAINING DETAILS. I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

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STATEMENT OF GOVERNOR BOB GRAHAM

ON BEHALF OF THE STATE OF FLORIDA TO

THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

REGARDING PROPOSED FEDERAL OIL SPILL LIABILITY

AND COMPENSATION LEGISLATION

MAY 1986

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Florida strongly opposes provisions of the House-passed oil spill legislation preempting existing state authority to tax oil for cleanup purposes. Such action coulo undermine Florida's ability to protect its beaches.

There is considerable merit in strengthening federal capabilities to deal with the threat of oil spills, but such efforts should complement rather than undermine effective state programs already in place. In your consideration of this legislation, you are urged to adopt the approach taken by both the House and Senate in pending Superfund reauthorization where agreement has been reached to eliminate similar preemption provisions relating to state hazardous waste cleanup programs.

The State of Florida has successfully operated its Coastal Protection Fund since 1970 and has found it to be effective in responding to coastal pollution spills. Preemption of Florida's program would compromise its ability to prevent or limit pollutant spill damages which might threaten the natural resources and personal property of its citizens. Unfortunate situations have arisen in the past where federal cleanup efforts have been inadequate. These include tarballs on state beaches and fuels spilled in marinas where damage has been confined to watercraft. Preemption of the State's current two cents per barrel tax on oil to deal with these problems would leave it dangerously and unnecessarily dependent on federal definition of what might constitute adequate cleanup and what containment and cleanup costs would ultimately be paid by the proposed federal fund.

The argument that maintaining state spill response funds constitutes a double tax on oil to accomplish identical purposes (such as reimbursement for costs of containment and cleanup) is defective. Florida's fund is statutorily capped at $30 million. The Fund reached its cap several years ago and, as a result, the State has ceased collection of the excise tax until such time as there is a drawdown on the Fund. The Florida statute specifically directs the State to seek cleanup and containment costs first from polluters and then from existing federal oil spill cleanup funds. In this manner, the Florida Fund's assets are reserved for cases where private or federal responses prove inadequate.

In summary, a "double tax" for similar purposes of the proposed federal fund would occur only where expenditures from the State's fund were deemed necessary because of inadequate response under existing or proposed federal programs. The excise tax would then be reimposed until the State Fund reached it statutory cap. There is no compelling reason why this effective backup capability to protect our citizens' interests should be summarily preempted by the federal government.

Florida's position is supported by the Florida Cabinet, the State Legislature, its environmental community, as well as the National Governors' Association and the National Conference of State Legislatures.

Thank you for your consideration of Florida's view on this important issue.

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II

99TH CONGRESS
2D SESSION

S. 2340

Entitled the "Oil Pollution Liability and Compensation Act of 1986".

IN THE SENATE OF THE UNITED STATES

APRIL 18 (legislative day, APRIL 8), 1986

Mr. STAFFORD (for himself, Mr. MITCHELL, Mr. CHAFEE, Mr. BENTSEN, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. BAUCUS, Mr. MOYNIHAN, and Mr. HUMPHREY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

Entitled the "Oil Pollution Liability and Compensation Act of 1986".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Oil Pollution Liability and Compensation Act of 1986".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the terms "oil", "discharge", "vessel", "public vessel", "United States", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", and "barrel" shall

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have the meaning provided in section 311(a) of the Federal Water Pollution Control Act;

(2) the terms "State", "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Federal Water Pollution Control Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of natural resources as specified in section 3(a)(2) of this Act;

(7) the term "Fund" means the Oil Spill Liability Fund established under section 4 of this Act;

(8) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under

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this Act or section 311(p) of the Federal Water Pollution Control Act;

(9) the term "natural resources" includes land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(10) the term "refinery" means a terminal which receives oil for the purpose of refinement; and

(11) the terms "terminal" means any permanently situated onshore or offshore facility which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility, or any pipeline including the pipeline constructed under the Trans-Alaska Pipeline Authorization Act.

LIABILITY FOR DAMAGES AND REMOVAL COSTS

SEC. 3. (a) Except where an owner or operator of a vessel or an onshore or offshore facility can prove that a discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) negligence on the part of the United States Government, or (iv) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, and notwithstanding any other provision or rule of

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law, such owner or operator of a vessel or an onshore or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Federal Water Pollution Control Act shall be jointly, severally, and strictly liable for—

(1)(A) all costs of removed incurred by the United States Government or a State under subsection (c), (d), (e), (b)(2)(B)(v), or (f)(4) of section 311 of the Federal Water Pollution Control Act or under the Intervention on the High Seas Act or section 18 of the Deepwater Port Act of 1974, and

(B) any other costs or expenses incurred by any person to remove oil as the terms "remove" or "removal" are defined in section 311(a)(8) of the Federal Water Pollution Control Act; and

(2) all damages for economic loss or loss of natural resources resulting from such a discharge, including:

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

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(D) any loss of use of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources; and

(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources.

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(c)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section, and inclusive of the limits of liability established under section 311(f) of the Federal Water Pollution Control Act, for each discharge or incident shall not exceed—

(A) $ per gross ton or $, whichever is greater, of any vessel carrying oil in bulk or in commercial quantities as cargo;

(B) $ per gross ton of any other vessel;

(C) the total of all costs of removal under subsection (a)(1) of this section plus $ for any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act;

(D) $ for any deepwater port subject to the Deepwater Port Act of 1974 (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $ exceeds $ per gross ton of such vessel); or

(E) $ for any other onshore or offshore facility.

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(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on bahalf of such owner or operator, if (A) the discharge of oil was the result of willful misconduct or gross negligence within the privity of knowledge of the owner or operator or of a gross or willful violation (within the privity and knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; or (B) the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities under the contingency plan established under section 311(c) of the Federal Water Poliution Control Act.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the exceptions or defenses of subsection (a) of this section, all costs of removal incurred by the United States Government or any State or local official or agency in connection with a discharge of oil from any offshore facility operated under the authority of or subject to the Outer Continental Shelf Lands Act or a vessel carrying oil as cargo from such a facility shall be borne by the owners and operator of

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the offshore facility or vessel from which the discharge occurred.

(d) In any case where the owner or operator of a vessel or an onshore or offshore facility can prove that a discharge was caused solely by an act or omission of a third party (or solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. Where the owner or operator of a vessel carrying oil as cargo or an onshore or offshore facility which handles or stores oil in bulk or commercial quantities, from which oil is discharged, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this subsection.

(e) The President is authorized to establish by regulation, with respect to any class or category of onshore or offshore facility subject to subsection (c)(1)(E) of this section, a

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maximum limit of liability under this section of less than $ not not less than $.

(f) A discharge of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign nation shall be deemd to be a discharge in violation of section 311(b)(3) of the Federal Water Pollution Control Act for purposes of this section, and claims for compensation for damages and removal costs may be made under this Act by any citizen of a foreign nation or by any foreign nation, if such damages or removal costs, resulted from a discharge of oil, or threat of a discharge of oil, from—

(1) a facility located in the United States or subject to the jurisdiction of the United States;

(2) a vessel incident occurring in the navigable waters of the United States; or

(3) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States.

(g) The owner or operator of a vessel shall be liable in accordance with this section and section 311 of the Federal Water Pollution Control Act and as provided under section 7 of this Act notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff).

LIABILITY FUND ESTABLISHMENT

SEC. 4. There is hereby established in the Treasury of the United States an Oil Spill Liability Fund, not to exceed $ except that such limitation shall be in-

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creased to the extent necessary to permit any moneys recovered to be paid into such Fund.

USE OF LIABILITY FUND

SEC. 5. (a) The President shall use the money in the Fund for the following purposes:

(1) payment of any claim for costs of removal or damages in excess of the amount for which the owner or operator of the vessel or onshore or offshore facility from which oil is discharged is liable under section 3 of this Act;

(2) payment of any claim for costs of removal or damages where the source of the discharge of oil is not known or cannot be identified;

(3) payment of any claim for costs of removal or damages in any case where the claim has not been satisfied in accordance with subsection (b) of this section;

(4) all removal costs or expenses or other costs of carrying out the national contingency plan established under section 311(c) of the Federal Water Pollution Control Act, including removal costs incurred by any person and approved under such national contingency plan;

(5) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Federal Water Pollution Con-

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trol Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under such national contingency plan;

(6) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;

(7) the costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;

(8) reimbursement to any State for the payment of any claims for costs of removal or damages payable under this act which such State has paid with funds under the control of such State pursuant to the national contingency plan or to a delegation under subsection (b) of this section;

(9) subject to such amounts as are provided in appropriation Acts, not to exceed $10,000,000 per fiscal year, the costs of research related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act to be performed by Federal agencies including the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration, as directed by the

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ocean pollution research coordinating committee established under the Environmental Research, Development, and Demonstration Act of 1978. Such research shall include, but not limited to (A) development and refinement of protocols to determine the type and extent of short and long term injury or loss of natural resources, (B) development and refinement of the best available procedures to identify the value of injured or lost resources, (C) laboratory or field research on the effects of oil on living and nonliving resources that will provide additional scientific basis for damage assessments, and (D) research on minimizing the damage caused by spill control, dispersal and removal operations. Responsibility under the preceding sentence shall be assigned in accordance with the assessment responsibilities established under subsection (e)(2) of this section and officials responsible for such assessments shall be consulted before proposal of any research plan or appropriation request under the preceding sentence; and

(10) subject to such amounts as are provided in appropriation Acts, the administrative and personnel costs of administering the Fund and this Act.

(b)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obli-

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gate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for costs of removal or damages resulting from the discharge of oil under this Act.

(B) Whenever the President receives information from any person alleging they have incurred costs of removal or damages resulting from the discharge of oil for which the owner or operator of a vessel or onshore or offshore facility is liable under section 3 of this Act, he shall notify the owner, operator, and guarantor of such vessel or onshore or offshore facility of such allegation. Such owner or operator or guarantor, may, within five days after receiving such notification or presentation of any claim by a claimant, deny such allega-

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tions, or deny liability for damages for any of the reasons set forth in subsection (a) of section 3 of this Act.

(C) The owner and operator of any vessel or onshore or offshore facility from which oil has been discharged shall provide notice to all potential injured parties.

(D) All claims shall be presented in the first instance to the owner, operator, or guarantor of the vessel, or onshore or offshore facility from which oil has been discharged. In any case where the claim has not been satisfied in accordance with this paragraph, the claimant may elect to commence an action in court against such owner, operator, or guarantor or to present the claim for payment from the Fund under this section.

(E) No claim may be presented nor may an action be commenced for damages under this Act unless that claim is presented or action commenced within six years from the date of the discharge or the date of the discovery of the loss, whichever is later.

(c)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the costs of removal or damages from the person responsible for such discharge.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for damages or

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costs of removal resulting from a discharge of oil shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal such claimant has under this Act or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to the limitation of liability provided for in section 3(c), all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs of removal for which the compensation was paid.

(d) The Fund shall not be available to pay any claim for costs of removal or damages to the extent the discharge or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(e)(1)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Environmental Protection Agency, and the Director of the Fish and Wildlife Service, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to,

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destruction of, or loss of natural resources resulting from a discharge of oil for the purpose of section 3(a)(2) (C) and (D) of this Act, section 5(a)(7) of this Act, and section 311(f) (4) and (5) of the Federal Water Pollution Control Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or units of affected area, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(2) In accordance with such regulations, damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil for the purpose of section 3(a)(2) (C) and (D) and section 5(a)(7) of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by (A) the Director of the Fish and Wildlife Service for living natural resources and their supporting ecosystems

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over which such Service has management or conservation authority, (B) the Administrator of the National Oceanic and Atmospheric Administration for other natural resources in the marine environment beyond the baseline of the terri torial sea, and (C) the Administrator of the Environmental Protection Agency for all other natural resources. Such officials shall act for the President as trustee under section 3(b) of this Act and section 311(f)(5) of the Federal Water Pollution Control Act.

(3) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of section 3(a)(2) (C) and (D) and section 5(a)(7) of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 3(b) of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

(f) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year

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after the establishment of the Fund and a final report two years after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

FINANCIAL RESPONSIBILITY

SEC. 6. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil as cargo or fuel) using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain in accordance with section 311(p) of the Federal Water Pollution Control Act evidence of financial responsibility sufficient to meet the liability to which the owner or operator of such vessel could be subjected under section 3(c)(1) of this Act. The provisions of paragraphs (3), (4), (5), and (6) of such section 311(p) shall apply to any vessel, or the owner or operator thereof, subject to this section. This subsection shall take effect October 1, 1978.

(2) Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil carried as cargo.

(b)(1) The owner or operator of any offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the liability to which the owner or oper-

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ator of such facility could be subject under section 3(c)(1) of this Act or $ whichever is less. Such evidence of financial responsibility shall be established according to regulations prescribed by the President and comparable to that required under section 311(p) of the Federal Water Pollution Control Act. This subsection shall take effect one hundred and eighty days after enactment of this Act.

(2) The owner or operator of any offshore facility subject to this subsection who fails to comply with this subsection or the regulations prescribed thereunder shall be subject to a fine of not more than $10,000 per day of violation.

STATE LAWS AND PROGRAMS

SEC. 7. Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of oil or other pollution by oil within such State.

CONFORMING AMENDMENTS

SEC. 8. (a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) Section 204(b) of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586) is amended, in the first sentence—

(A) by inserting after the words "any area" the words "in the State of Alaska";

(B) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

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(C) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability Fund and Compensation Act of 1986".

(2) Section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is hereby repealed. The Trans-Alaska Pipeline Liability Fund is hereby abolished. All assets of that fund, as of the effective date of this section, shall be transferred to the Oil Spill Liability Fund established by section 4 of this Act. The Oil Spill Liability Fund shall assume any and all liability incurred by the Trans-Alaska Pipeline Liability Fund under the terms of section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)).

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (88 Stat. 10) is amended to read as follows:

"SEC. 17. The Fund established under section 4 of the Oil Spill Liability Fund and Compensation Act of 1986 shall be available to the Secretary for actions taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

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(1) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 4 of the Oil Spill Liability Fund and Compensation Act of 1986, as appropriate,".

(2) Subsection (f) is amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against any guarantor of an owner's or operator's liability under the Oil Spill Liability and Compensation Fund Act of 1986,".

(3) Subsection (g) is amended, by inserting in the last sentence, after the word "party" the words "or against any guarantor of an owner's or operator's liability under the Oil Spill Liability and Compensation Fund Act of 1986.".

(4) Any sums appropriated prior to the enactment of this Act under subsection (k) of such section 311 for the purpose of responding to oil pollution shall be transferred to the Fund established under section 4 of this Act.

(d) DEEPWATER PORT ACT.—The Deepwater Port Act of 1974 (88 Stat. 2126) is amended as follows:

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(1) In section 4(c)(1) strike "section 18(1) of this Act;" and insert in lieu thereof "section 6 of the Oil Spill Liability and Compensation Fund Act of 1986,".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and clause (1) of subsection (m) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established purusant to subsection (f) of this section.", and inserting in lieu thereof "fund established under section 4 of the Oil Spill Liability and Compensation Fund Act of 1986".

(4) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively, and clauses (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

(f) Any expenditure under section 5(a) of this Act, other than those (1) under the authority of section 311(c) of the Federal Water Pollution Control Act involving the balance of the contingency fund established under section 311(K) of such Act and transferred to the Fund under section 8(c)(4) of this Act, or (2) involving the balance of the Trans-Alaska

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Pipeline Liability Fund transferred to the Fund under section 8(a)(2) of this Act, shall be made after October 1, 1986, for any claim arising before such date and after the date of enactment of this Act.

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